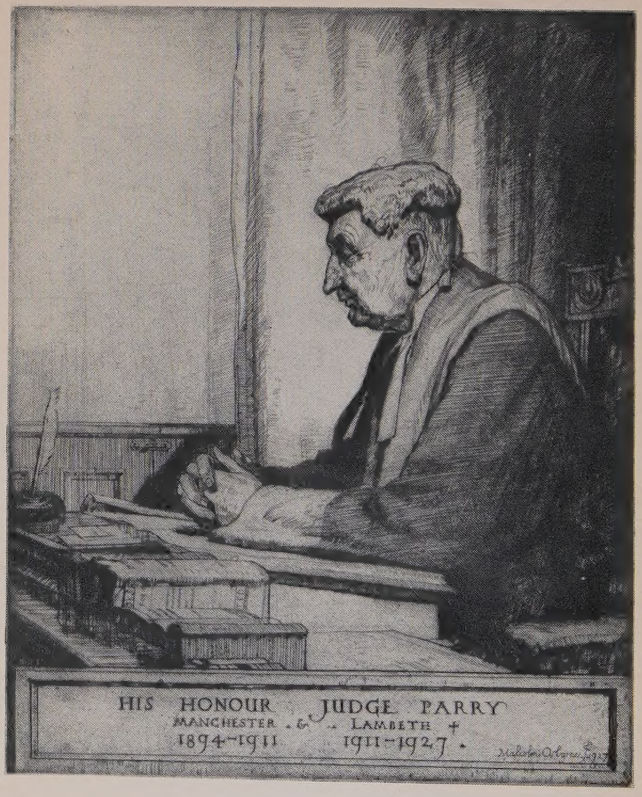
Class 261.1 S P249 Book
General Theological Seminary Library
CHELSEA SQUARE, NEW YORK

Purchased from the fund bequeathed to the Seminary by
EUGENE AUGUSTUS HOFFMAN, D. D.
DEAN 1879-1902

THE GOSPEL
AND
THE LAW



Copyright reserved for owner by Royal Academy Illustrated.

HIS HONOUR

SIR EDWARD ABBOTT PARRY

THE GOSPEL

AND

THE LAW

GEN THEO SEMINARY
LIBRARY
NEW YORK

LONDON

WILLIAM HEINEMANN LTD.

261.1 S
PW9

85596

First Published
1928

HAMMER CUT AND
HAMMAY
NEW YORK

Printed in Great Britain at
The Windmill Press Kingswood
Surrey.

"*Let not the Law of thy Country be the non ultra of thy Honesty; nor think that always good enough which the law will make good. Narrow not the Law of Charity, Equity, Mercy. Joyn Gospel Righteousness with Legal Right.*"—
Sir Thomas Browne, Christian Morals, Sect. 11

CONTENTS

CHAPTER		PAGE
I	CONCERNING THE GOSPEL	1
II	AUTOBIOGRAPHICAL	23
III	THE EVOLUTION OF THE COUNTY COURT	54
IV	THE STORY OF IMPRISONMENT FOR DEBT	72
V	THE SCREW SYSTEM	94
VI	THE WORKMEN'S COMPENSATION ACT:	
	1. IN PARLIAMENT	111
	2. IN THE LAW COURTS	124
	3. IN THE FUTURE	139
VII	A VOLUNTARY CIVIL SERVANT	151
VIII	DEPARTMENTALISM AND HUMANITY	178
IX	DIVORCE:	
	1. THE STORY OF THE LAW OF DIVORCE	218
	2. THE ROYAL COMMISSION AND AFTER	238
X	JUSTICE AND HUMANITY	256
XI	CONCILIATION COURTS	281
	APPENDIX A	299
	NOTES	301
	INDEX	311

The Gospel and the Law

CHAPTER I

CONCERNING THE GOSPEL

"But deep this truth impressed my mind
Through all His works abroad
The heart benevolent and kind
The most resembles God."

ROBERT BURNS. *A Winter Night.*

THE object of this book is to explore the dark places of the law in relation to the poor by the light of the Gospel. It does not claim in any sense to be a religious treatise, but law must be based on some principle, and the man in the street like Sir Thomas Browne rather assumes that it is, or ought to be, based on some idea of righteousness.

Mazzini used to say there were two things essential to the realisation of progress, "the declaration of a principle and its incarnation in action." I accept the principle of Gospel teaching as it is generally understood among reasonable people, and then proceed to inquire how far the general principles of right action stated in the Gospel have been in Mazzini's phrase "incarnated in action" in our statutes and procedure relating to the affairs of the poor.

It has been suggested to me that a better title

for the book would have been "Christianity and the Law", but to my mind this would have been misleading, though I confess the thought of it is tempting to the legal mind on account of many excellent precedents that point to its adoption.

For it was Sir Matthew Hale in Taylor's case who said: "Christianity is parcel of the Laws of England" and this phrase has often been repeated with approval. But Hale used it as an authority for the proposition that "to reproach the Christian Religion is to speak in subversion of the Law." Taylor was a feeble-minded lout with a foul tongue. He was found guilty of blasphemy and sentenced to stand in the pillory at Guildford, where he had blasphemed, and also at Westminster, Cheapside and the Exchange.

Now most people to-day would agree that such a brutal method of punishment is not in accordance with the teachings of the Gospel and therefore Hale's dictum is not really of much service to me. Every form of Christianity would no doubt claim, as the Law claims, to be founded on the teaching of the Gospel. Those who practise the necromancy of spiritualism or the magic of faith-healing, those who dissent from their neighbours in exclusive sects, and the great churches of England, Rome and the East, are all forms of Christianity. But a mere believer in the Gospel has no right of entry, as such, to any of these mutually exclusive ecclesiastical clubs, and logically can only join one of them by agreeing to hate and detest the remainder.

But when we speak of the Gospel and the Law instead of Christianity and the Law we are out-

side these melancholy sectarian quarrels. Whatever we may believe about a sacrament, a word unknown to our English Bible, we should all agree more or less that the Gospel in the widest and most popular sense merely means the glad tidings of the teachings of the Master, and that these teachings are to be found in the Sermon on the Mount, the Lord's Prayer and the sayings and parables of the Master which are set down in the Books which we call the Gospels.

This somewhat primitive and childlike faith I derive from my earliest teachings in the blessed days of good Queen Victoria. I fancy that most people's religious notions, such as they are, find their source in similar natural springs. In the pleasant twilight of second childhood one drifts back to the dreams of the earlier childhood. For me the Gospel of my home was the teaching of the Master about right action and decent behaviour. There was no recitation of creeds, and Sunday was in every sense a holy day. The Gospel therefore I regarded, and still regard, as setting down a standard of right living, whilst the history of the churches, who have sought to use it merely as a basis of right-thinking, though exciting and entertaining, does not help me to solve the problems of life. The creed of St. Athanasius, the *Origin of Species,* Frazer's *Golden Bough* and Sidney Hartland's *Primitive Paternity,* are all beautiful and learned dissertations. But when it comes to deciding which, if any, is the truth, the whole truth and nothing but the truth, I remember with pleasure the precedent set by that sensible stipendiary Gallio who refused to waste the

time of the Court over irrelevant and futile matters entirely beyond his comprehension.

Many religions provide kindred mysteries for their devotees. Mithraism has a Feast of the Nativity, a Sunday, an Adoration of Shepherds, a Baptism and a Last Supper, but Mithraism has no Gospel of peace and goodwill, and that is the new note in the Gospel which was absent from the gamut of earlier religions and moralities. The right action or righteousness of the Gospel was of a different nature to anything that had gone before in its insistence on unselfishness. I remembered a passage in an old sermon of Charles Kingsley, which, rather luckily, I have found again, in which he says: "The old Romans who were a stern legal-minded people, used to say that righteousness meant to hurt no man, and to give every man his own. The Eastern people had a better answer still which our blessed Lord used in one place, when he told them that righteousness was to do to other people as we would they should do to us: but the best answer is our Lord's in the text: 'Thou shalt love thy neighbour as thyself.'"

Now the question that has haunted my mind for many years is, do we base our law or procedure on any form of righteousness whatever and if not how otherwise? There is a notion among some religious folk that the Gospel is the copyright of their particular creed, and that it is in the nature of sacrilege or desecration for a layman to pray it in aid of his own views of what is ill or well with the world. That matter was to my mind settled at the time of the Reforma-

tion and since then the Gospel in this country is no longer the property of a tied house. The Gospel has certainly been put to many strange uses, and perhaps many will think it could be put to no stranger use than to direct the affairs of inferior courts of justice. But if you are convinced that this Gospel provides the best guidance man has yet received for his conduct in life, is it not common sense that it should be used as a foundation upon which to build the laws which you and your fellow-citizens are called upon to administer and obey?

I do not propose to labour this point further because unless my reader is in agreement with me about the practical use of Gospel teaching in the matter of legal reform the rest of this book will be of no interest to him whatever. For, as I have said, I propose to make an enquiry as to how far the existing law in relation to the poor is based upon the Gospel and how far it is practicable to bring it into nearer relation to the teaching of the Master. And I propose to devote my space wholly to laws which directly affect the poor, in the first place because the Gospel seems to me to be very clear and certain about our duty to our poorer neighbours, and secondly because for thirty-three years most of my time has been spent in settling the affairs of the poor and I know something about the business which I believe is worth setting down before I pass away.

Not that I would have anyone think that I hold that the Gospel is only serviceable in framing law and procedure for the poor. I think it should be the foundation of all law and I do not find the

legal philosophers have anything better to offer. The quarrels of jurists are about as valuable reading as the disputes of theologians. Each one is after a sound theoretical basis on which to build his laws. One refers to right action, another to the immutable laws of good and evil, a third to the law of Nature, and one of the best of them coins that dear old phrase "the greatest happiness of the greatest number." I studied the books of the jurists with deep interest many years ago, not because I mistook them for Gospels or enjoyed their style but because I had to pass an examination in their subjects. I remember now with pleasure that John Austin, who was certainly not the least of these philosophers, was quite content to take as one of his bases of law those portions of the word of God signified to men through the medium of human language which we call the Gospel. But indeed all writing on the basis and origin of law comes to much the same thing and in many forms of words merely tells you that law to be any good to mankind must be founded on what mankind believes to be right.

Perhaps the English jurist who accepted the idea of the Gospel origin of the law with the most simple faith was Andrew Horn who compiled *The Mirror of Justices* some time before 1328 when he died. The book was not printed until 1624 and since then has been the subject of much legal comment.

Horn's first book deals with "Sins against the holy peace" and herein he tells us that "the law of which this summary is made is extracted from ancient customs warranted by Holy Writ, and be-

cause it is given to all in common it is called the common law." And he has a quaint idea that the purpose of the law and the practices of the judges is to lead citizens into paths of right action, "by love of peace and chastity and temperance, and by friendly admonition towards mercy and good works."

Andrew Horn was a fishmonger and therefore a layman and had puritan leanings and a vivid imagination so that much of his history is fiction and many of his leading cases are mere legends. Horn was Chamberlain of the City from 1320 to 1328 and for many years made collections of statutes, charters and other legal documents. Professor Maitland, Horn's learned commentator, admits that the fishmonger could write straightforward annals and was a rational observant man, alive to the value of public records. A great deal, therefore, of what he copies out is, no doubt, genuine enough, though Maitland does not hesitate to say that some of his stories are wilful falsehood and to suggest that his puritanism and religiosity may be all cant.

Maitland was a very learned man but I fancy his humanity peeps out in his acrimony towards Andrew Horn. It must be annoying to a professor of law to find a mere fishmonger producing such a best seller in the legal book markets as *The Mirror of Justices*. Coke, who in his day was reckoned a sound lawyer, thought a lot of Horn's book and quoted him with judicial approval. I expect Maitland, who knew more about it than anyone else, is right in his criticism, but the book interests me because I find myself

in sympathy with a lot of Horn's ideas. For instance, in writing of the criminal law he tells us that "the poor man who to escape starvation takes victuals to sustain his life, or a garment to prevent death by cold, if thereby he saves himself from death, is not to be adjudged to death, if he had no power to buy or borrow, for such doings are warranted by the law natural."

I am very doubtful whether this was ever good common law acted upon in our criminal courts, but I thoroughly approve of Andrew Horn setting it down as a guide to justice, and it is refreshing to know that at the beginning of the fourteenth century there were writers on law who were eager to mitigate the rigour of the law in favour of the poor. Horn may not have actually stated what the law was, but he had a shrewd idea at the back of his mind what it ought to be. Now one of the beauties of our common law is that it is always possible that a new generation of judges will cease to declare what it is, and will have the courage to declare that it is what it ought to be.

A famous instance of this occurred in the Jackson case in 1891. For many centuries the lawful right of an Englishman to control and correct his wife was never doubted. It was part of the common law and was upheld in the first instance, in the Jackson case itself, by Mr. Justice Cave and Mr. Justice Jeune. When, however, the affair came before the Appeal Court, Lord Halsbury swept away the mouldy precedents which safeguarded the right of a husband to beat his wife, merely saying that such authorities "are not, I think, now capable of being cited

in a court of justice in this or any civilised country." In the same way at an earlier date Lord Mansfield decreed that slavery was "so odious" that it could not have a place in English Law. Both these are historic incidents of judges using their powers to bring the law into harmony with higher ideals or, in other words, to gospelise the law.

And Andrew Horn had a great deal to say about our usages and customs which make up our common law, and in his fifth book he deals with abuses of the law, that is to say, decisions of judges and acts of bureaucrats which are frauds on the law and repugnant to right and not avowable by holy writ. In the forefront of these is the very modern complaint that the subject has no practical remedy against the injustice of the bureaucrats who act in the name of the Crown. "The first and sovereign abuse is that the King is beyond all law, whereas he ought to be subject to it, as is contained in his oath."

Horn in the fourteenth century resented the orders in council, or whatever they were then called, and preferred the decision of a judge in open court to what Lord Hewart has described as "the edicts or orders of anonymous and mysterious young gentlemen, however ingenious, who are hidden somewhere in government offices and speak in the name of this or that department." The inhumanity of many departmental decrees and the impossibility of obtaining justice against secret authorities above the law is as sovereign an abuse to-day as it was in the days of Andrew Horn.

And in Horn's days the real masters of the government were the Civil Servants of the time. This is pointed out by Professor Tout in his interesting lecture on "The English Civil Service in the Fourteenth Century." "The bureaucrat," he says, "was as active and vigorous in the fourteenth century as he is in the twentieth." He was a clergyman or "clerk" learned in the civil and common law but not especially the common law. The common law belonged to the schools of law in London where men could study for their profession without becoming "clerks." Whether Andrew Horn studied law in the London schools or not, his ideals of right and his definition of abuses show that even in the fourteenth century there was a feud between the common law and bureaucracy.

Whoever writes the history of our law anew will have to consider the researches of Professor Tout, and he will find that the civil servants were the first owners of our Chancery Courts and other legal institutions and that the system of fees and costs varying "between perfectly permissible presents and open and shameful corruption" is a *damnosa hereditas* from the clergy and clerks who ran our courts in early days. Their nepotic methods of appointing judges and civil servants remained with us from the fourteenth century until the days of the Barnacle family. Nor has it entirely disappeared in our own day, for Professor Tout notes with amusement that: "There were innumerable mediæval instances of the sublime method of appointment still prevalent in subordinate posts in the law courts, by which, we

are told, it happens that at present (1915) of nine chief officers of the King's Bench seven are relatives of judges, and of the eight clerks of Assize five are sons of judges. It would be impossible to draw from contemporary politics a more happy and complete survival of the Mediæval Mind."

The fact that for many centuries the Exchequer and the Chancery and the civil government of the country was in the hands of monks and "clerks" and that bureaucracy is still hampered by the traditions of its forbears, is sufficient to explain why the teaching of the Gospel has had so little influence in modifying the pagan cruelty of the law. For though there were many pious good souls among the mediæval "clerks," as there are to-day among the bureaucrats, their attitude towards the Gospel has always been that it was dangerous to the community for the lower classes to know too much about it, and that however right it was, as a rule of individual life, it was both unsuited and irrelevant to the week-day necessities of politics, law-making and legal procedure.

When you find that Andrew Horn's official world was not so very different in spirit from the world of to-day it is easier to follow the intent and meaning of his book. Historians, who write as though civilisation—by which they mean railway trains, motor-cars, typewriters, gramophones, etc. —has much influence on the spiritual outlook of human beings, deceive themselves and their readers. From the point of view of the Gospel the bureaucracy and the law courts of the fourteenth century were run on much the same lines as they are to-day. Therefore we need not wonder that

they caused the same uneasiness in the minds of thoughtful citizens.

Andrew Horn's complaints sound very modern in a lawyer's ears. He grumbles about delays in obtaining a hearing, complicated forms of procedure, the exactions of jailers and their fees, their cruelty in loading prisoners with irons, and of many other unjust and inhuman actions which were not remedied until centuries after his death, and some of these remain in a less virulent form, poisoning the fount of justice in our own day.

And I gather that in spite of his complaints Andrew Horn had on the whole a great admiration for many of the ideals of English justice. When one seeks for better things it is a futile gibe to say you are an enemy of your country because you find imperfections in her institutions.

And in making my enquiry into the condition of our laws in relation to the poor you will not find that because I desire to replace our law and procedure by better things therefore I have no respect and devotion to the existing law of our country. On the contrary, I think it one of the finest systems for the administration of justice that exists, but it is no more perfect to-day than it was in the days of Matthew Hale. There were many humane and righteous judges in his time, but that does not convince me that the sentence in Taylor's case was in accord with the teaching of the Gospel. I can believe even to-day if a man were to be put in the pillory in Trafalgar Square thousands would go and see him and some would enjoy pelting him. I am certain that if you had a public execution at the Stadium you could sell all

the seats and get a big sum of money for the cinema rights. We have no occasion to throw stones at our forefathers of the eighteenth century who enjoyed the brutalities of Tyburn, the cruelties of the pillory and the whipping-post and made up parties to see the women flogged in the Bridewell. In these matters custom has made our conduct outwardly more in accord with Gospel teaching. It is a simple matter for us to see that these old punishments were degrading, but what we must not forget is that to the generation that lived with them they were things to rejoice in and uphold.

The strong, sensible men of the eighteenth century were utterly blind to what was going on around them. This phenomenon is a recurring human decimal in the statistics of sociology. Dr. Johnson, who was a devout believer in the Gospel, and must have read and heard, and indeed known by heart, the Master's teaching about the brotherhood of mankind and the duty of universal benevolence and charity, really believed that the "poor in England were better provided for than in any other country," and that the condition of the lower orders was in his day a condition of things which a citizen could be proud of. As to Tyburn, he shook his head and said "the age is running mad after innovations; all the business of the world is to be done in a new way; Tyburn itself is not safe from the fury of innovation." And when the good doctor talked this nonsense Boswell and Sir William Scott nodded approval, just as you or I would have done, and have often done, when some important old fossil tells us that

the poor live lives of luxury and that leniency is a terrible error in our criminal courts. I daresay Oliver Goldsmith used to feel sorry for his old friend when he heard him talking nonsense, for Oliver was not a strong sensible man, but more of a poet and a dreamer, and his own outlook on our legal system, that his wiser friends praised, was summed up in the well-known line, which certainly has a Gospel ring about it, "Laws grind the poor and rich men rule the law."

And I know that there are a lot of wise writers who will tell you that all lawyers are greedy rascals and that the idea of a lawyer daring to refer his industry to gospel precedents is of itself an impiety. It would be foolish to deny that the texts concerning lawyers in the Scriptures are not pleasant reading. But we must remember that the word "lawyer" was really equivalent to "scribe" and it seems possible that the well-known text, "Woe unto you also ye lawyers; for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers," refers merely to those scribes who were also Pharisees. But in any case, there was in the Master's day no profession of lawyers or advocates whose duty it was to see that their clients, rich and poor, obtained equal justice in the courts of the country. Such a profession must indeed have had the Master's sympathy and encouragement since John, as translated by Wycliff, sanctifies the word advocate in the text "We haue auoket anentis the fadir, Jhesu Crist just." A just advocate, therefore, and one who is ready to help the poor to obtain justice need not, I think,

trouble his head very much about what the lawyers did in the days of Herod, or what was said about them.

There was no necessity for a lawyer to behave like a Pharisee, even in those days, and Zenas, the lawyer, receives honourable mention. The trouble with the scribes and Pharisees of old is akin to the trouble to-day of so many of our rulers and governors and bureaucrats, and high priests, and schoolmasters, and upper dogs generally, that they are utterly convinced that they are not as other men are. The unhappy Pharisees were incapable of repentance because their moral health was so obvious and lasting that they needed no physician. That was why they could not receive the Gospel and that is why they outwardly patronise it to-day but do not make use of it. Swedenborg said that "the trouble with Hell is that we shall not know it when we arrive." And much in the same way the trouble with the Pharisee is that he does not know what a Pharisee he is.

In any case, a great many of the lawyers of to-day have no touch of the Pharisee about them, and spend much of their time pulling asses out of pits, tempering the wind of the law to shorn lambs, and other similar tasks approved of by the Gospel and its teachers.

There is this, too, to be said in defence of Scribes and Pharisees, that their education had brought them up in the belief that their form of religion and ideas of behaviour are the only right ones. It is impossible for a Pharisee to understand that the poor have any real grounds of com-

plaint for the woes of their daily life. In the same way, a patriotic Englishman firmly believes that no country in the world has anything to teach him in matters of social conduct. We all share with the Pharisee in some degree a human immunity from appreciating the condition of things by which we are surrounded. It is this which makes social reform so difficult. This blindness of comprehension about human affairs can scarcely be called an infirmity. It is rather a natural endowment arising out of and in the course of our human development and attributable to and aggravated by the teachings of our godfathers and godmothers.

For we arrive in the world little visitors knowing nothing much about it and we are brought up to believe that everything that has been going on for the last few centuries has been for the best, and the tired old ones who are leaving us are never tired enough to leave off telling us that they have made every possible reform that it was safe and advisable to make. In the few years of hustling life, and in the scanty hours that he can spare from earning his daily bread, the average citizen has little time and opportunity to investigate the social system of which he is a unit, or to understand how or why the wheels of the world machine are grinding unevenly. When we read of the horrors of two or three hundred years ago, it should not be to cast a reproach against our fathers, but rather to learn who were the men and women who moved the world of that day to see things as they were. These glorious spirits have enabled us to enter upon our inheritance free from the worst

degradations of the past and we may best render them thanks and praise by learning to follow their example.

I make no doubt that most of us are much like old Fynes Moryson, who, being an ordinary average Englishman, saw the everyday horrors of his own country, but was in no way impressed by them, yet was moved to grave indignation at the wickedness and cruelties of foreigners. Truly the seventeenth century Turk was a cruel beast. Moryson tells us with honest reprobation, but in gruesome detail, of the Turkish methods of impaling, where a "man may languish two or three days in pain and hunger if torment will permit him in that time to feel hunger, for no man dares give him meat," and of casting down malefactors to pitch upon hooks and other nameless horrors. Yet if he had been in London on October 19th, 1615, and dropped into the Guildhall, he might have heard the Lord Chief Justice of England, the great Coke, using much persuasion to Richard Weston, who, being accused of the murder of Sir Thomas Overbury, stood mute, refusing to plead.

Coke and his brother judges, having failed to persuade the wretched Weston to utter a plea of not guilty, the Lord Chief Justice repeated for his benefit the law of England at that date, and reminded him that the prisoner who wilfully stood mute must undergo the *peine forte et dure,* the extremity and rigour whereof was expressed in these words, "*Onere, frigore et fame.*" "For the first," continued his Lordship, "he was to receive his punishment by the law, to be extended and then to have weights laid upon him no more than

he was able to bear which were by little and little to be increased. For the second, that he was to be exposed in an open place near the prison in the open air, being naked. And, lastly, that he was to be preserved with the coarsest bread that could be got, and water out of the next sink or puddle to the place of execution, and that day he had water he should have no bread, and that day he had bread he should have no water; and in this torment he was to linger as long as nature could linger out so that often times men lived in that extremity eight or nine days; adding further that as life left him so judgment should find him. And therefore he required him upon consideration of these reasons to advise himself to plead to his country."

Notwithstanding this advice the wretched man continued mute, but after a consideration, during an adjournment of three or four days, of the law of procedure as laid down by Lord Chief Justice Coke, Weston thought better of it and pleaded not guilty, and was duly convicted and executed.

How illogical it seems that a citizen whose State executed this form of torture on its prisoners should hold up the holy hands of horror at the variations of cruelty that satisfied the lust of the unspeakable Turk! The *peine forte et dure* remained one of the pillars of our law until the reign of George III and was carried into execution in the reign of Queen Anne and George II—so obstinately do we cling to our ancient precedents and so fearful are we of facing the narrow paths that lead to better things.

I want you, therefore, to approach the subject

fully understanding that the mere fact that a legal system satisfies the great bulk of its practitioners and excels other systems in honesty of purpose and administration, does not mean that it is without flaw. And I wish to make it clear also that there need not be any fear in timid hearts that this or any other attempt to reform the law on Gospel lines is likely to cause any very immediate revolution. Andrew Horn put forward a lot of wise suggestions six hundred years ago and six hundred years hence it is by no means certain that all the best of them will have been carried out.

The world is a slow world and Nature, like any other artisan, does her building and painting and decorating with exasperating deliberation. If I were a sculptor called upon to design a symbolic statue of Nature I should choose the legendary plumber as a model. Slow, hesitating, occasionally messing up the taps and flooding the world's bathroom, or exploding the gas mains in the cellars of the earth, but generally muddling along somehow until in the end a job is done—such is the way of Nature. You cannot cinematograph the growth of the world or its rocks and trees or the social progress of its human beings.

One learns from history, too, that if a civilisation ceases to progress along right lines it comes to an end, and is wiped off the slate as a failure, and presently another civilisation starts and tries its prentice hand full of hope and ignorance. The Romans had an excellent legal system and modern nations have tried to re-bottle it into modern wine skins of the best law calf, but the

experiments have not been a great success, as Gospel readers would have foreseen.

I do not state it as any new discovery, but it has gradually impressed itself upon my mind during thirty-three years' service in the County Court, that all our laws and the procedure by which we administer them are defective in relation to the poor, because they are merely a patchwork of ancient cruel pagan laws of past ages, and their authors cannot break away from old superstitious uses, and close for ever those volumes of laws that were made in days when liberty, equality and fraternity were words of anarchy and rebellion.

The current mentality of the law in my own time has been distinctly Old Testament. An eye for an eye and a tooth for a tooth and costs following the event. Generations of lawyers have been brought up on these principles of justice. As between two equally rich men or corporations, companies, and public departments with unlimited rates and taxes, and shareholders' money behind them, it may be said to be a workable system and at a price it administers justice. But in the nature of things it is of little service to the poor.

Now I take it that the Master, whilst accepting all that was good in the old commandments and the teachings of the prophets, added to these bases of right conduct the "new commandment," as St. John calls it, "Love one another." Therefore if we are to have a law and an administration of that law founded on the Gospel we must apply tests to see how far it contains elements of peace,

goodwill, forgiveness, charity in the sense of love, brotherhood and, in a word, unselfishness.

And I find a passage in an old book of mine, that I must have marked over forty years ago when I was reading for the Bar, that quite probably first gave me the idea that the teaching in the Gospel might be of practical service to a student of the law. The book is *Ecce Homo* and, curiously enough, the author does not himself mention the law as a science capable of assisting humanity.

"Christ," he writes, "commanded his first followers to heal the sick and give alms, but he commands the Christians of this age, if we may use the expression, to investigate the causes of all physical evil, to master the science of health, to consider the question of education with a view to health, the question of labour with a view to health, the question of trade with a view to health; and while all these investigations are made, with free expense and energy and time and means, to work out the re-arrangement of human life in accordance with the results they give."

And when I read this inspiriting book again, after years of wandering in the wilderness of the law, it occurred to my mind that if I were to recount some of the experiences of my travels, and what I have seen and encountered, and the results of my labours and the lessons I have learned in my journeys, it might be of service to those whose feet are as yet but on the edge of the desert. And, further, that if I could persuade a new generation that it is a business proposition that

the law in relation to the poor should be based more directly on Gospel teaching it would make the legal profession a sweeter business and add to the sum of human happiness.

CHAPTER II

AUTOBIOGRAPHICAL

Though varying wishes, hopes, and fears,
Fever'd the progress of these years,
Yet now, days, weeks, and months, but seem
The recollection of a dream.

WALTER SCOTT. *Marmion. Canto iv.*

WHEN Newman wrote his apologia he prefaced it with a curious saying, the truth of which has been of recent years made specially manifest. For he found it almost a martyrdom to tell the story of his conversion, but it had to be done, and in the end he found it not so hard as he expected, since, he writes: "as men draw towards their end, they care less for disclosures." Had he lived until to-day he might have said they care too much for disclosures.

But I have no disclosures to make that will give any entertainment or pain to others, and only propose to set down a few words about my career in order that my reader may understand what opportunities I have had to study the subject I am writing about, and why I feel called upon to bear witness to what I have learned.

A Welshman is nothing if not genealogical and nowadays this habit has been praised by scientists as being in the interest of students of heredity and therefore needs no excuse. My grandfather, John Humffreys Parry, was born in 1786 and was a son of the Rev. Edward Parry, Rector of Llanferres. He was a barrister and joined the Oxford

Circuit and the Chester Sessions. But like myself he did not stay long at the Bar. He was an enthusiastic Welsh antiquary and historian. His best-known volume is *The Cambrian Plutarch.* He seems to have been devoted to letters from the first and ultimately came to London and gave his whole time to literary projects.

I have an aged brown leather scrap-book of his, the leaves of which are saffron-tinged with years, in which are pasted his poetical contributions to the press from the days when he was a youth in Mr. Wynne's office at Mold and wrote "Colin to Chloe" in the *Chester Courant,* to later years in the Temple, when he sends the *Morning Post* between thirty and forty "Stanzas on Waterloo," to which that paper gave wider prominence than it would to any contemporary poet of to-day. There are also political essays under varying signatures; Julius, Fitz-Briton, Velox, etc., in which we are told that "our innovators at home would entail on our country all the evils of anarchy, under the pretence of reforming the abuses of our religious and political institutions." These were written in evident fear and terror of Bonaparte and France and are an exact counterpart of similar articles that we read in our own day inspired by fear of Russia. "Reform and Ruin" was the heading chosen for them in the *Morning Post,* an alliteration that still attracts the simple-minded politician. It is interesting to note, however, that the particular "poisonous fruits of the tree of liberty," that he seemed to fear most, were parliamentary reform, Catholic Emancipation, and popular education. I cannot

find that it ever occurred to him that anyone would be so abandoned as to seek to destroy his beloved country by advocating legal reform.

My father was born in 1816 and was but a child of nine when my grandfather died in 1825. He was for a time in a merchant's office, but I know he migrated to the printed book department in the British Museum and was a friend of Panizzi, who became an assistant librarian in 1831. He now read for the Bar in his leisure moments, took an active interest in Reform and was a member of the Moral Force Chartists. He was not in the least interested in antiquarian problems, but one often finds that a father's enthusiasms are reproduced in the son by greater enthusiasms for entirely different objects.

My father stood for the Charter, Universal Suffrage of men and women, and National Education, and no doubt later on these extraordinary views stood in the way of his attaining judicial office. But in the profession he made good very quickly. He was called to the Bar in 1843 and made a Serjeant in 1856 and enjoyed a large practice. He stood for Parliament twice, at Norwich and Finsbury, but his opinions were of course far too sensible or, as his friends said, "advanced" for the age he lived in. He used to say that such chance as he had at Finsbury was ruined by a charge—not true in fact—that he had signed a petition demanding the opening of the British Museum on Sunday. As he explained, the only reason he had not signed was that he had not been asked to sign.

Serjeant Parry was one of the leaders of the

Home Circuit when Bovill, Ballantine, Hawkins, Lush and Shee practised. These were the days of local *venue*, when Surrey cases had to be tried in Guildford, Kingston or Croydon, and Kent cases at Maidstone. In the summer my father took a furnished house at one of these places and the family moved down with him to Maidstone or Guildford to our great joy. I have often been taken into Court to hear my father speak and have very distinct recollections not only of him but of Ballantine, Shee and Hawkins. The last, of course, I saw very often during the Tichborne case and met in after life.

So that from the earliest, like Mr. Vincent Crummles's pony, who you will remember went the circuit from his first years onwards, I have lived in an atmosphere of law and in company with lawyers. Moreover, I was educated at King's College School, which dwelt in those days in the cellars of Somerset House, and I did my home lessons in my father's library, where I used to inspect such of his briefs as looked entertaining and browse among his fine collection of history, drama and general literature. I was brought up on law and letters. Those were great days and remain a beautiful memory, but they came to a sudden and tragic ending. In January, 1880, with little warning, death took my father and mother within twenty-four hours of one another and they were buried on the same day.

I left school and for some little time studied mathematics with the intention of going to Cambridge. Later on I went to the Slade School, being under the impression that I was an artist. None

of my teachers or fellow-students seemed to share that impression, but I am glad I had even a few months' experience of drawing, as it has remained a hobby with me to this day and one of the chief recreations of a busy life has been water-colour drawing.

But I soon felt that I must take life more seriously and in January 1882 I entered the Middle Temple and began to read for the Bar. At the end of 1884 I married and in January 1885 I was called to the Bar and soon afterwards joined the Northern Circuit and localised in Manchester. I had good fortune and in less than ten years I had a very big practice for so young a man, but it was a great strain on my health and it took me away from books and pictures and journalism and domestic life and social hobbies; things that I valued more than the trophies I had already won and the wonderful prizes that dangled before me on the horizon.

Now I am far from saying that I left the Bar and became a County Court judge because at the time I had any strong feeling that it was my mission in life to do so. A love of ease, a fear of health disaster, a desire for independence of a kind, and a Quixotic imagination that foresaw adventures in common-place surroundings, may fairly account for my accepting Mr. Bryce's offer in 1894 of the office of County Court Judge of Manchester. My friends and relations condoled with me, and Mr. Bryce, as he laughingly told me when we met, was removed from the Duchy of Lancaster to the Board of Trade a few days afterwards.

For myself I have never regretted the step I took. In spite of the drab and often squalid surroundings, moral and physical, in which one's work has to be done, there is a wider opportunity of studying, and even serving humanity, in an inferior court than in the more dignified and spacious palaces of justice devoted to the affairs of the rich.

Life in a county court is more illustrated, sporting and dramatic than life, say, in the Court of Appeal, and you can take the same sympathetic domestic interest in the affairs of your client that a priest takes in his parishioners or a doctor in his hospital patients. These are the advantages of the job. After thirty-three years of it you become immune from the disadvantages and even forget what they were. The Treasury was one of them, if my memory serves me, but I am not even sure of that to-day.

But at first I found my job a very lonely one. I did not think I had any notion how much I should miss the daily comradeship of the Bar. Nevertheless though the bench elevated me above my fellows it did not elevate me above their fellowship. And it was through the charity and good will of the advocates who practised before me that my courts were the success they undoubtedly were. It was team work did it. We did not waste time over bad points. We did not spin out undefended actions. We did not give displays of oratory. But we got to the real point of the case and having found it stuck to it until we had settled it.

A great deal of time is wasted because lawyers

are under the impression that their clients like to hear the same arguments twice over and to have useless witnesses called to testify to irrelevant matters. I rather agree that they do, at the moment of the trial, but repent it afterwards when they see the bill. And why should a lawyer pander to his client's ignorant desires any more than a doctor should advise his patient to over-eat himself because it gives him immediate pleasure? At all events we proved that our methods did not injure business. The more we did, and the quicker we did it, the more the public brought us to do. So that the Bar was satisfied and fell into a method of work which, if unusual, and at times irregular, was, as the index of taxed costs showed from year to year, distinctively nutritive.

For when I took over the Manchester County Court the index figure of taxed costs stood at £1315 and when I left after 1910 it stood at £3935. And in the same way when I started at Lambeth the figure was £2723 and in 1920 it had reached £5121. After that year the statistics were no longer published. Both courts were box-office successes and people brought their disputes there and paid to have them tried out, and they brought more cases of large amount than had ever come before. Our lists were crowded, but by careful preparation of them and the assistance of every one concerned, it was very rare indeed that a case in the list for the day was not reached and finished. When I left the Bench I left no *remanets* behind me.

That, I think, to a business man is the first essential matter. People who have disputes and

want them heard and adjudicated would willingly give a day to that end, but no business man, who has important work to attend to, can afford to hang about waiting for cases to come on and attend at adjournments at the will of the judge. No County Court where such a state of things exists is of any use to suitors or the Bar, and there is no real excuse for such a condition of things.

Throughout my experience I have found that suitors were sensible enough not to waste their own and other people's time summoning juries. It is pleasant to try a case with a jury but it takes a long time and time is money. The few I tried satisfied me that the same result would have been arrived at without wasting the jurors' time. I have always thought that if a case needed a jury, and some cases undoubtedly are better tried by a judge and jury than a judge alone, then it should go to the High Court where it would have a special jury if necessary, but at all events there would be a Court with an adequate jury-box and waiting rooms and ample time, as appears from the reports, to give as many days to the hearing as counsel, parties, witnesses and the judge conspired to dissipate.

I have set down these figures and results which relate to my more well-to-do customers because I am satisfied that with better equipped buildings, and less niggardly expenditure on staff, the County Court as a litigating machine could be made a far more useful affair than it is, but that is a part of my story that has not a very near relation to the theme of the Gospel and the Law.

Except, perhaps, in this way, that County Courts were, as I shall show, instituted as poor men's Courts and by continued increase of money jurisdiction, parliament has made it increasingly difficult for judges to ensure that the poor shall have a first mortgage on their time and attention. Further, I claim a sympathetic hearing from my fellow-lawyers in the face of the figures I have quoted, because whatever other results have followed my labours there is no doubt that one excellent result was obtained—the taxed costs increased.

Now one great difficulty about discussing legal reform with one's fellow-lawyers or starting any innovations is that instinctively the lawyer regards them as an attack on the sources of nutrition. Like the wolf, and, as the sociologists would say, "for the same reasons", the lawyer has the herd instinct strongly developed. For generations he has congregated by himself in his Inns of Court, he has feasted in a herd, gone to church in a herd and preyed on his fellow-man in a herd. He is to-day probably a more compact and powerful herd than the priest, the doctor or the politician. The lawyer herd has always resented reform, from the common desire of mankind for self-preservation and an abundant food supply.

And it is a scientific fact that the wolf pack forms an organism stronger than any individual animal, even though he be a noble beast such as a "lion" or a "tiger," and that is why wolves survive longer in civilised countries than lions and tigers. In the same way the lawyer survives in civilisation more comfortably than the artist

or poet, who like the lion or tiger finds nutrition a far more difficult task than he did some hundreds of years ago.

It is, therefore, very natural that anyone who proposes to interfere with the nutrition of the lawyer by proposals of reform should arouse the herd's anger, and if a lawyer is foolish enough not to follow herd impulses he cannot blame his fellow-lawyers for snapping at him. He may, however, congratulate himself that lawyers, also like wolves, feast gregariously and exercise their discipline with rough pleasantry. To this extent a lawyer who desires reform is in a much better position than a priest whose fellows are far more venomous and destructive. The world would be a much happier one if priests, doctors, scientists and politicians and other human herds could learn a lesson from the lawyers

> And do as adversaries do in law,
> Strive mightily, but eat and drink as friends.

And for myself I can honestly say that, though I have been an unorthodox wolf all my life, I have never met with any unkindness from my fellow-wolves but quite the reverse. This, perhaps, has been due in a large measure to the fact that my humble efforts at promoting reform have met with little success and therefore have not as yet interfered with anyone's nutrition.

But though this failure to impress my own generation with the folly of their methods used to depress me I now look back with considerable gratitude to providence for my escape from any form of martyrdom. The herd, assured in its

own wisdom, has been kind enough to suffer me gladly and such reforms as are wise and right will certainly come about when providence ordains. Meanwhile, it has been a pleasant pursuit in my leisure to point out what these reforms are going to be.

Nor can the rest of mankind throw stones at the lawyer for his conservatism. As Trotter says, "Man is notoriously insensitive to the suggestions of experience. The history of what is rather grandiosely called human progress everywhere illustrates this." He gives as an instance the development of the steam engine and points out how obvious was the necessity of each advance in its mechanism, and how bitterly its assimilation was refused until, as he puts it, the machine almost invented itself.

This is peculiarly the case with legal reform and it is of the utmost importance for a legal reformer to try and prove that the reform he is advocating will not lessen costs. Another tactical method of advancing reforms is to show that at the worst they will only injure the smaller and less virile herds. Thus the more enlightened common lawyers viewed with comparative tranquillity the reform of the ancient Chancery abuses and the abolition of Doctors' Commons, whilst Lincoln's Inn cared nothing about the excitement on circuit over the abolition of local *venue*. But if I can show my fellow-lawyers that in relation to poor people they can found their procedure on purer lines without any definite injury to themselves I believe that they will very readily assist to help to bring this about. One must not

blame a barrister in practice for not being an ardent reformer. As Samuel Romilly said nearly a hundred and fifty years ago: "the business of a barrister depends on the good opinion of attorneys; and attorneys never could think well of any man who was troubling his head about reforming abuses when he ought to be profiting by them." There is still an element of truth in that proposition.

Even before I became a judge I had studied questions of legal reform and greatly admired my friend Charles Hopwood's interesting experiment at Liverpool, where he was Recorder, in modifying the mechanical cruelty of long sentences for trumpery crimes and dealing with each case before him on Gospel lines. How many thousand years of penal servitude he saved these poor outcasts I cannot say. His innovations on the judicial practices of his day received every discouragement from his contemporaries on the Bench and at the Bar but are now first principles of criminal administration.

Hopwood advised me to make public my own experiences about imprisonment for debt and other legal disabilities of the poor and although I received support from the press and among citizens interested in welfare problems, the parliamentary and departmental people whose business it ought to be to study these matters evinced not the least interest in the questions I discussed or the information I collected. This appeared to me in those early years somewhat surprising but I had then no first-hand knowledge of the inertia and futility of bureaucracy, a subject which in

later years I had opportunities of studying in detail.

Just as I was leaving Manchester the Government of the day had set up a conciliation scheme in the railway industry, under the provisions of the Conciliation Act, 1896. Lord Buxton, who was then Mr. Sydney Buxton, President of the Board of Trade, invited me to place my name on a rota from which the employers and men were to choose an independent chairman for their conciliation boards. The chairman was only to be called in when there was a deadlock. Much to my surprise, no fewer than seven companies selected me as their chairman. I confess that I was rather mortified that the Lancashire and Yorkshire was not among them. The good old L. and Y. had been clients of mine in a small way and I knew many of the officials and directors.

I remember well meeting my friend Parmiter, who was then Solicitor to the Company, and telling him, not perhaps without a note of pardonable vanity in my voice, of the honourable invitations I had received.

"What," he cried, "do you mean to say that seven of the companies and their men have agreed upon you as independent Chairman!"

"That is so," I replied with some haughtiness, being a little hurt at his surprise and astonishment.

"Well I'm—— However, you'll never have anything to do," he added, with a grunt of satisfaction.

"And why not?" I asked.

"Because," he replied with great deliberation, "if they could agree about you they could agree about anything."

I thanked him heartily for the compliment and went my way; but thinking the matter over I am not sure that he intended it as a compliment. We were and, happily, still are good friends, but at that period I think there was a difference of opinion between us about demurrage on coal wagons or an accident arising out of and in the course of some one's employment that was heading for the Court of Appeal on its way to the House of Lords.

However, he turned out to be right, and the London and North Western Railway Company who were my largest employers never once called me in. But on the occasions when my services were required I found it possible, owing to the sense and good feeling of the disputants, to bring about a reconciliation and decision by consent. The chief virtue of an independent chairman is that, as he is a stranger to the business, the matter has to be explained to him at length, every point has to be elucidated anew, and in the course of discussion the inessential topics in the arguments are made clearer to those who have to defend them. Bit by bit it becomes easy to give way on some matter of detail that is obviously unimportant and concession breeds concession.

I took a great interest in the various matters I was called in to decide and later on during the war Lord Askwith asked me to undertake missions of conciliation in other industries. The practical knowledge I gained of the business

success of conciliation convinced me that there were great possibilities in the idea not only for industrial trouble but in disputes between individuals. Obviously a legal method of settling human differences by promoting peace and goodwill was an illustration of how legal procedure might be based on Gospel principles, though I do not think that idea occurred to me at that time.

At some later date, before the end of the war I believe, the Lord Chancellor's department decided that Judges should not undertake these tasks. The matter was never discussed with me nor could I hear that any of my brother judges were consulted. The invitation I had originally received had come from a member of the cabinet but it was withdrawn by a departmental letter. I was glad to be relieved of the work and have my leisure to myself again, but I was also pleased to have had such an interesting experience.

In 1911 I left my spiritual home of Manchester for my native London. I remember, when I was moving south, Bishop Welldon asking me on the steps of the pavilion at Old Trafford: "And where is your new diocese?"

"Lambeth," I replied proudly. "It sounds ecclesiastical, doesn't it?"

"It did until your name was connected with it," said the Bishop with a merry laugh.

Certainly there was nothing very ecclesiastical about the building in Camberwell New Road in which the Lambeth County Court is housed. Of many degrading buildings connected with the housing of the County Courts it stands low in

the scale though it is not, perhaps, the worst. Dartford is distinctly fouler. These buildings belong to the Office of Works and I asked Sir Schomberg McDonnell, the then Permanent Secretary, to come and have a look at his property. He came and sat with me for a few moments and was much discommoded by the foul atmosphere within the crowded Court, and the intolerable noise of traffic from the adjoining street when the windows were open to let in a little fresh air. He at once agreed that a new Court must be built and doubtless if the war had not occurred something might have been done. For Sir Schomberg was a keen, alert personality and an Office of Works to him was an office where works were to be instituted and carried through. I met him again at the Institution of the Prince of Wales at Carnarvon, a pageant which owed much of its glory to the hard work he gave to perfecting the details of it. He had not forgotten my troubles and said a few words of encouragement about Lambeth and the new Court. Alas, he retired soon afterwards, but when the War came he volunteered for France and was killed in Flanders. As for a new court in Lambeth, that may have to await the result of the next war.

The apathy of Government about housing their employees is really rather remarkable. When you visit your masters in their grandiose palaces in Whitehall, you feel a certain resentment that they do not interest themselves in their desirable property in the provinces. Manchester and Salford Courts, though old-fashioned, were roomy and not uncomfortable, but directly I entered them I

suspected the drains. The Manchester Court had been the town house of the late Mr. Cobden and you would no more expect him to be a practical expert in drainage than Mrs. Jellyby herself. His mind was occupied with greater matters. So was the mind of the Office of Works. I had that in confidence from their local inspector who had already reported adversely about our drains. I now began a correspondence with the department on the subject and went to see our City Surveyor. He apparently knew all about it but had no power to condemn our drains because the building was Crown property. Had it been my property he would have made an order against me to-morrow. I went on corresponding and breathing vengeance, modified by sewer gas, against the authorities, but with no effect. Then I called in a sanitary engineer of great experience to test the drains and report; and I sent his report, which would have frightened a sewer rat, to the Office of Works, and they acknowledged it politely and we corresponded about it.

Then my friend, Registrar Lister, died very suddenly and one of the causes of his death was reported to be typhoid. I do not think he acquired it in the Court, but I was away ill myself at the time and do not know. I reported the matter and the Office of Works were very grieved and promised me that my complaints should be attended to. When I got back to work I found nothing doing, so at last I got impatient. I sent a wire to the Permanent Secretary that as my expert said Manchester was worse than Salford I was closing Manchester Court and taking all cases

at Salford, where I would read them my expert's opinion and explain matters generally. As Manchester and Salford at that period of their municipal history hated each other like Christians, I thought the Office of Works would like to be preparing their answers to questions in the House.

I received a wire from Mr. H. W. Primrose, C.S.I., asking me to stay my hand. Next day there came a long letter from him promising the work should be done, and in the morning the local inspector met me with joy in his face, for at last his warnings were to be attended to. It was obvious to me that the Primrose path of dalliance had never been sullied by this squalid matter until my wire arrived, and the great man in London had probably never seen the reports of his worthy local representative.

It took two jobs of work to get the business done properly, for the first contractor would not take my expert's advice. After the first effort of the Office my expert used to report at intervals on the condition of things, and when they went wrong again the department went to great trouble and, as he thought, unnecessary expense, to do things properly. Still, they were done and he was duly thanked and rewarded for his services.

And I will say this for a bureaucrat, that when he turneth away from his wrath and doeth that which is lawful and right, he does it very handsomely and I was informed, though I cannot vouch for it, that they decorated our drains with mirrors so that the inspectors had a clear view of the sewer and all its beauties and the City

Surveyor admitted that our drains were at length a model to the community.

This was my first lesson in departmental diplomacy. I came to the conclusion that as far as possible it was wise to have no truck with departments. But if it was a matter where you were bound to bite your thumb at them, it was no use to do it in the style of a polite letter-writer, but you must attack them with the ancient coarse bravery of the cateran of the marches. This frightened the minor scriveners and they then appealed to someone in authority to rid them of their turbulent correspondent. This official you often found to be a very gentle, perfect knight, with the same instincts of justice as yourself, whose real difficulty in doing what he wanted to do was caused by that state of temporary pecuniary embarrassment in which a grudging Treasury keeps all its most useful servants.

And let me say that, in all our little encounters, the individual bureaucrats I met or corresponded with were very pleasant and courteous, and I believe this is so in all parts of the world, since the author of *Bolshevist Russia* tells us of their present bureaucracy that "no more charming people can be found provided one has not to deal with them in their official capacity." This is certainly true of Whitehall. And now that I have no longer to live in county courts, I find myself selfishly hoping that the Office of Works, if it has a choice of two evils, will rather turn a deaf ear to suitors and workers clamouring for hygiene and sanitation than economise on their beautiful work of restoring ancient abbeys and protecting historical

earthworks. For since one has had leisure to visit and enjoy the wonderful memorials of bygone ages that they have patiently rescued from neglect and decay, the very name of The Office of Works fills one's soul with the fragrance of gratitude.

It took me a long time to appreciate the real inertia of departmentalism and its hostility not only to reform but to any effort to make the best of its opportunities of doing good. Any effort to help the poor or relieve the unfortunate of burdens was regarded not only as Quixotic but as offensive to good manners. I think the trouble is that reforms cost money, that the Treasury has never had any money to waste on reform, that the departments want to please the Treasury and that you cannot serve God and Mammon.

I was quite ignorant of the ways of bureaucracy when I became a judge and indeed in my innocence looked forward to official assistance in improving my courts and making them of more use to my poorer clients. I am very ready to admit to-day that I was a fool and that I ought to have known that the rule laid down by Jeremiah in relation to Ethiopians and leopards is equally true of barnacles. The long tradition of evil customs that attaches to our ancient bureaucracy cannot be shed in a generation.

But I did not make this discovery in a day. I was always an optimist and it was only by experiencing a continued series of disappointments that I arrived at these somewhat melancholy conclusions.

The first hint I got of the real attitude of officialdom towards my little show arose over the

trial of cases relating to foreign-speaking Jews. I had a case before me once in which two poor foreign-speaking Jews each brought down his own interpreter. A small scrap of paper cropped up in the case with some Yiddish inscription upon it. One interpreter swore it was a receipt and the other that it was an order for a new pair of boots. Without knowing anything of Yiddish it occurred to me that these divergent readings were not authoritative. The case was adjourned. I applied to some friends on that excellent body, the Jewish Board of Guardians, and they sent me a respectable interpreter.

The Guardians were so interested in my experiment that they arranged for its continuance, and all cases—and there were a good many in which Yiddish-speaking people were witnesses—were taken on a certain day a month and the interpreter sat with me. The first gentleman who came was a young man reading for the priesthood and he took a keen interest in the work and told me that he had long felt that some such scheme was desirable in the interests of honesty and just dealing.

After this arrangement had continued for some months and proved its utility I sought to interest Lord Herschel in the matter. Many of my Yiddish clients came from Prussian Poland, exiles from their native land. I knew, of course, that the Lord Chancellor was a member of the Church of England, yet I supposed that ancestral sympathy and the memory of his great-grandfather, Rabbi Hillel, who, my interpreter assured me, was a man of great charity to whom my scheme

would have appealed, might have touched his heart. However, I was wrong. The business was curtly turned down on the ground that the Treasury had no money for such things.

To my disgust as a citizen, but my gratitude as a judge, what the State could not do the Jewish Board of Guardians continued to do for them. The scheme continued to prove its utility and when Lord Halsbury was Lord Chancellor I wrote to him about it. Lord Halsbury was a friend of my father from very early days and wrote me the kindliest letter about the whole business, of which he thoroughly approved. He agreed that the interpreter ought to be paid by the State and not by private charity, and the Treasury found after all that they had the money. The sum they were asked to find was twenty-two guineas a year.

I always had a suspicion that this was done not so much because it was right to do it, but because my father and Lord Halsbury were friends. I gathered that the Treasury were not so much hurt at having to disgorge twenty-two guineas as a matter of personal courtesy from a Lord Chancellor to an inferior official, as if it had been done because it was right in principle.

But a little later on I annoyed them far more. The Money Lenders' Act of 1900 was a pet project of Lord James of Hereford. When it was passed the authorities issued a set of rules by which, among other things, a poor debtor, who claimed that the interest he was called upon to pay was excessive, could only come into Court to claim a reduction by issuing a plaint in equity,

which would cost him a sovereign, according to the scale of fees then in use.

Up to this time it had been customary for the Rules Committee to send drafts of rules to some of the judges of the bigger courts and I, taking this gesture seriously, had gone through a long draft with my registrar and chief clerk and sent in a dossier of disapproval, and after that I never had any more rules sent me, as I might have foreseen.

When these Money Lenders' rules came along it was the Christmas holidays. I therefore sat down and wrote to *The Times* a Christmas message of peace and goodwill, pointing out that this fee-snatching by the Treasury would not bring in money but would really prevent the Money Lending Act functioning to protect the poor.

Now I gather that it is not the habit of civil servants to read *The Times* on their holidays, though I have seen them studying it, as they should do, in office hours. But Lord James read the letter and wrote to me at once for full information with references to statutes and rules and orders. I had known him since boyhood and it was, of course, a pleasure to me to assist him in any way.

I heard afterwards that there was much consternation in official circles when Lord James took the matter up and the greatest surprise was expressed at his masterly knowledge of the obscure rules and orders of the County Court. Although *Truth* and the financial papers attacked the Treasury about it, all this happening in the holidays, the Treasury never heard of it and

it remained a mystery who was responsible for the trouble caused, for of course the rules had to be modified.

When my part in the comedy became known, a suggestion was made that I had done something very reprehensible, but when I forwarded my official critic a copy of a kind letter of thanks and congratulation that I had received from Lord James of Hereford and expressed my desire to publish a full account of my evil deeds I was readily forgiven.

And these incidents, I suppose, remained in my mind, for at that time I regarded them as quite trivial, though annoying, and I did not at all see how important they were in illustrating the difficulties in the way of any right action in framing and administering laws for the poor.

About this time I wrote *Katawampus* and in a nonsense doggerel song illustrative of childlike depression the following verse occurred:

> If you have the Katawampus,
> You feel rather like a grampus,
> When the homeward tide is southerly and slack,
> Horrid pains in every scale,
> And a headache in your tail,
> While barnacles are creeping up your back.

"Whatever made you think of barnacles creeping up your back?" asked one of my brother judges.

"Have you ever discussed with the Treasury the affairs of the County Courts?" I replied.

Yet who could be more courteous and kindly than the official himself as long as you did not

ask him for any of the contents of the money-chest he was sitting upon? And how could he be expected to interest himself in my silly little schemes and visionary projects?

For if your business is to serve the Treasury and you live in the White Halls of official paradise, it follows that your thoughts will not aspire to holy things but must be always downward bent,

> "admiring more
> The riches of heaven's pavement, trodden gold,
> Than aught divine or holy else enjoy'd
> In vision beatific."

Thus I find it much easier to understand all these things now than I did then, for unless and until we really intend to base our laws on Gospel methods, the pagan Treasury attitude to these absurd ideas of mine is logical and correct. In the long run, however, I do not believe it will prove to be good business.

My duties in my new circuit in Kent brought me in touch with country people as well as Londoners and I was interested to observe how contented many of the rural workers were to accept as inevitable, burdens that would have roused the northerners to protest and rebellion. Among several curious and archaic matters that came before me the claim of a lord of a manor to certain small sums of quit rents puzzled me not a little. In this part of the world it appeared that every now and then stewards of manors sent in to freeholders, whose lands were in the curtilage of the

manor, bills for small sums of money. If these were not paid then the lord of the manor sued for the amounts in the local county court and judgment with the court fees was generally entered against the defendants as of course.

In 1913 several defendants grumbled to me about these claims. They were people of small means and unrepresented and I desired the plaintiff to prove his case. One of the cases, *Bailey v. Hopperton,* was gone into at length. The defendant was sued for 11d. It was made up in the following way:

1. Three years' arrears of rent at one penny a year . . . . 3d.
2. A Customary fee to the Steward for an acquittance . . . . 4d.
3. An amercement by the Court Baron for neglect of the tenant to perform his duty of suit of court . . 4d.

The Lord of the Manor had an annual dinner at the Bull Hotel and this he claimed was a Court Baron where the Homage could amerce their fellow freeholders who did not attend. This seemed to me a purely fanciful procedure to-day. The proposition that one man could summon another to lunch at The Bull and persuade his friends, the so-called Homage, to fine him 4d. for not accepting the invitation seemed to me absurd. This so-called amercement in the case before me was unrecoverable, as there was no record on the Court Rolls that the freeholders had presented the defendant for amercement.

The second claim raised many interesting problems, and if anyone could sue, it was not the Lord of the Manor. The right plaintiff was probably the steward, who ought to sue for work done, but then he had never in fact given any quittance or receipt or been asked to do so.

But the main claim of 1d. a year was more troublesome and could only be dismissed on the ground that the whole business was obsolete. I should have had no difficulty in so holding and on the evidence of the way these little rents had been created by a so-called Homage in 1890 I should have decided that they were invalid. I should also have held that if there was a real Court Baron in existence then they could appoint their own beadle or bailiff or reeve to distrain or levy for the amounts and I should not come into the business until someone brought an action for trespass against this official. I could see no reason why a modern County Court should be used to do the unpleasant little jobs of this ancient Court Baron and its Gilbertian Homage.

In a word, I should have felt bound to decide that as the lord carried out none of the ancient services to his tenant neither could he claim the privileges of suit and service. However, in my researches I discovered that to have a manor or to hold a Court Baron was undoubtedly a franchise derived from the Crown. Now a County Court has a limited jurisdiction. Parliament in its wisdom has decreed that it cannot deal with many difficult matters such as breach of promise, slander and, among other things, franchises. So

I had no help for it and could only dismiss the plaints for want of jurisdiction.

I printed my decision in the case, as I had gone to some trouble in trying to find out whether a Homage was still an incident of rural life, and I sent it to my fellow judges who, I believe, have since acted on my view of the business.

I strongly urged the plaintiff to appeal or to bring an action in the High Court, but nothing, as far as I can hear, was done. I have never heard since of these cases coming into local courts but I believe that Court Barons have their annual bean-feasts and some folk continue to pay these little sums. And if they get their lunch at The Bull, into the bargain, I do not see that they have any ground for complaint, as long as it is understood to be merely a social pageantry in memory of mediæval times.

In 1912 I was invited to sit on a Departmental Committee to consider the Law and Practice of Juries and how it could be improved. I was interested to see and hear something of the way these matters were conducted. Why such a Committee was called together, what it was expected to discover, and why Mr. McKenna and the Home Office clerks could not have found out all they wanted to know about the matter for themselves, is more than I can say. However, the experience was a very interesting one. Lord Mersey presided over our deliberations with great good sense and humour and our report [Cd. 6817] price 6d., is a cheap and entertaining publication.

Of all the amazing ways of discovering what

is wrong with the world commend me to a commission. In all committees you seem to arrive at the lowest common denominator of the intelligence of the individuals composing them, but in a departmental commission it seems possible to explore even lower depths. We examined several witnesses from afar upon the number of requests for juries in their districts. One gentleman from far Wales gave us not exact figures but estimates which surprised me, so next morning I brought down a copy of the Judicial Statistics and confronted him with the real figures, which caused him genuine surprise. "What are the Judicial Statistics?" asked one learned member of our body. Others evinced a similar interest, and in the end we agreed to take these official figures instead of searching for the information afresh.

The Judicial Statistics of those days were edited by Sir John Macdonell, C.B., LL.D., a Master of the Supreme Courts, and were a brilliant statistical drama of the law, and were wonderfully valuable material for legal reformers, but we are too poor and inert to afford to maintain such splendid services any longer.

The most interesting discussion that took place was over the question of the abolition of the special jury. There is, of course, in principle no defence for this anomaly. In these days of education the opinion of a man of means is of no greater value than of a man of no means. If it were otherwise then it seems reasonable that special juries should be summoned in important criminal cases. Mr. Ellis Davies, a Welsh solicitor, Mr. Philip Snowden and I, filed a memorandum dis-

agreeing with the rest of the Committee on this subject, to which Lord Mersey, who had the greatest experience of the matter of anyone on the Commission, allowed us to append his view which was: "that but for the strong feeling in the profession in favour of its retention he would have supported the suggestion that the special jury should be abolished."

The strong feeling of the profession has always opposed all legal reforms until a stronger feeling outside the profession has made them inevitable. Perhaps that is Nature's method of evolution. On the other hand, delay in reform, as history teaches us, sometimes overwhelms the strong feeling of the profession by revolution.

I had already published several papers whilst in Manchester about The Insolvent Poor, the methods of the Workmen's Compensation Act and the domestic affairs of the County Court, and found that they had interested a wide circle outside the official world. Sir Edward Hulton invited me to contribute to his popular papers essays on the law in relation to women and the poor, and I was surprised to find what an interest these created, at all events among the common jurors of humanity.

I turned my attention to the history of legal reform in this country and was pleased to discover that most legal reformers were regarded by the community, and certainly by the profession, as pestilent rogues or cranks or fools or, at the best, as feeble-minded visionaries. I do not think my humble efforts at enlightening people about the law in relation to the poor were ever near

enough to promoting actual reform to provoke any animosity among my neighbours, though I understood they were officially regarded as indiscreet. But inside my court I had many wearying hours of exercising my discretion and when I worked overtime my hobby was to exercise my indiscretion. And, as Sterne pointed out, the wisest of all men—not excepting Solomon himself—have had their Hobby Horses, their coins and cockleshells, maggots and butterflies "and so long as a man rides his Hobby Horse peaceably and quietly along the King's Highway, and neither compels you or me to get up behind him —pray, Sir, what have either you or I to do with it?"

In the end of 1913 the articles I had written on the Law and the Poor appeared in the *Sunday Chronicle* and were extended in a volume that was published in the autumn of 1914. I need hardly say that, although at that time we were all endeavouring to adapt our minds to the official slogan, "Business as usual," it was useless to expect a hearing for such a question at such a time, but the book attracted some interest here and had a kindly reception in America.

With the War came new and strange duties which I shall refer to later on. I put my Hobby Horse in a loose box, having no time to exercise him, and though perhaps he does not prance and curvet as gaily as he did, yet I think he has still enough life in him to carry me along the old road that I have now leisure to follow for the last time.

CHAPTER III

THE EVOLUTION OF THE COUNTY COURT

The evolution of an organism is primarily the formation of an aggregate by the continued incorporation of matter previously spread through a wider space—the early history of a plant or animal, still more clearly than its later history, shows us this fundamental process.

HERBERT SPENCER. *First Principles II*, § 110.

A HUNDRED years ago the law in relation to the poor was considered by orthodox lawyers and public men to be as near perfection as was possible. It was recognised that it was neither cheap nor expeditious, but as Lord Lyndhurst remarked with crafty sagacity, "cheap law did not always mean cheap justice nor expeditious law expeditious justice." He ignored the challenge of the reformers that for the poor there was no such thing as justice, and that even for men of business and property, such justice as was administered in our Courts was shunned by sensible citizens, as being too costly and indigestible for human nature's daily food.

But there were men in those days who recognised the scandalous iniquity and inefficiency of a legal system which existed mainly for the benefit of the profession, and already a few wise citizens of all classes were beginning to reason with the lawyer herd, and the herd were showing their teeth at their critics rather than lending them their ears. Lord Althorp, who as early as 1821-1824 took a real interest in the grievances of

the working classes and the poorer citizens, introduced bills to establish local courts, but the profession turned them down. He had the support of men like Sir James Mackintosh, Samuel Romilly, and, of course, Lord Brougham.

Lord Brougham has never had justice done to him as a law-reformer. But for his insight and determination the law and procedure of our courts might have remained as in the middle ages until to-day. He was the first prophet to raise his voice and declare openly the pagan condition of our legal surroundings, and like all prophets, his contemporaries pelted him with abuse and threatened him with destruction. It is said that a combine of attorneys on the Northern Circuit proposed a professional boycott of the pestilent law-reformer. Brougham's reply was that if that occurred he would take briefs direct from his lay clients. Nothing came of the lawyers' threats. Brougham was a first-class fighting man and could hold his own against many herds. The lower branch of the herd feared him and consequently fed him with briefs. He had declared war on the Pharisees of Chancery and the Scribes of legal bureaucracy, and after many defeats in a twice seven years' war he ultimately routed his adversaries and compelled them to enact the measures of reform that they had abused and delayed.

I cannot honestly say that Brougham deliberately quarrelled with our legal system and its administrators on the ground that they were not animated by Gospel principles. I do not suppose that the notion ever occurred to him. But on

the other hand his work of reform was something much more practical and direct than Jeremy Bentham's critical examination of how far the lines of our law coincided with expediency or could be extended to enclose the varied angles of human happiness.

If Brougham was not a true gospeller of legal reforms, yet he spoke his warnings and denunciations with prophetic vigour. His lips were filled with indignation, and his tongue was as a devouring fire, but he could also, with his vast knowledge and learning and his untiring industry, put forward a reasoned case for reform that even the most listless were bound to attend to.

Mr. Atlay, in his excellent essay on Lord Brougham, quotes a graphic summary from a speech of Lord Macaulay descriptive of our laws a hundred years ago. Macaulay foresaw that posterity would marvel at "that series of penal statutes, the most bloody and inefficient in the world, at the puerile fictions which made every declaration and every plea unintelligible both to plaintiff and defendant, at the mummery of fines and recoveries, at the chaos of precedents, at the bottomless pit of Chancery."

But for Lord Brougham, it is possible that many of these abuses would have remained with us until to-day, so determined were our rulers and governors against reform and so powerful and solid was the opposition of the Bar to any diminution of their privileges.

On February 7th, 1828, Lord Brougham arrived at the House of Commons with a hatful of oranges and by their aid spoke for six hours

and three minutes on Legal Reform. The speech is worth reading again as a reasoned historical exposure of the quaint fictions, the antique mummeries and barbarian procedure of the time. You might have thought that the survey would have convinced every hearer that the time for destructive action had arrived. But that is not the way the world moves. Nevertheless, the great speech had some results, and Lord Lyndhurst appointed commissions to consider the law of real property and the procedure of the Courts of Common Law.

For my part I treasure that speech, as the first intimation from the Woolsack that its occupant had any real conception of the injustice done to the man in the street and the bottom dog by the law and its methods of administration. At the same time, Brougham whole-heartedly recognised what was good in the law, the purity of the bench, the publicity of the Courts and the independence of the advocates, but these things did not close his eyes to the misery and injustice they permitted. "We may talk," he said, "of our excellent institutions and excellent they certainly are, though I wish we were not given to so much Pharisaical praising of them; but if while others, who do more and talk less, go on improving their laws we stand still, and suffer all our worst abuses to continue, we shall soon cease to be respected by our neighbours or to receive any praises save those we are so ready to lavish upon ourselves."

The same spirit is animating us to-day. We have yet to realise the difficulty of adapting our legal procedure to the needs of the poor, and Lord

Brougham stated the problem we are faced with to-day in a memorable phrase. "The first and most obvious step is to remove the encouragement given to rich and litigious suitors by lessening the expense of all legal proceedings, and I would put an end to all harassing and unjust defences by encouraging expedition." After that he dealt with simplicity of procedure and fewer hearings and appeals.

Towards the end of his discourse he suggested the adoption of Courts of Conciliation, a practical method of helping the poor and unfortunate, that would long ago have been adopted but for the obstinacy of professional opposition.

In a peroration of the noblest eloquence that will remain a purple passage in the records of English oratory for all time, he reminded the House of the boast of Augustus, who found Rome of brick and left it of marble. "But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence."

The Commissions got under weigh and drifted slowly down the sluggish stream of official enquiry. I have dipped into the huge volumes, the result of the Commissioners' long continued industry, and find that they contain curious records of many strange absurdities that passed for wisdom a hundred years ago. These books to-day have only a faint antiquarian interest.

Brougham, having his own ideas of how to do things, saw no purpose in waiting for the conclusions of the Commissioners, and on April 29th, 1830, moved in the House of Commons for leave to bring in a bill for the establishment of Local Judicatures, with a jurisdiction limited to £100 in debt, £50 in injury to person or personal property, and an unlimited jurisdiction by consent.

This would have given the country practically the kind of County Court it has at length attained, for it was not until 1903 that the limit of jurisdiction in County Courts was raised to £100, so consistently powerful and determined were the profession not to cheapen the law. In this bill, too, the judges were entrusted with a duty unknown to English justice, for they were to act as the *juges de paix* in endeavouring to prevent useless litigation, and were to be "Judges of Reconcilement." This excellent bill perished in the prorogation and dissolution of Parliament in July, 1830.

Brougham now became Lord Chancellor and took his seat on the Woolsack on November 22nd of the same year, but it was not until 1833 that he found time to introduce another Local Jurisdiction Bill. To buy off opposition this was made a less ambitious measure than the earlier one, and had received the blessing of the Common Law Commissioners.

Lyndhurst, however, told the House that he had consulted Westminster Hall about the bill and from highest to lowest, with a few honourable exceptions, "the great body of the learned profes-

sion were adverse to the Measure." He pointed out that the bill was destructive of the independence of the English Bar. As soon as provincial Courts existed, barristers practising at Westminster would have to leave London, abandon their town practice and convert themselves into provincial barristers. "Need he tell their lordships that such barristers would be inferior in learning, would be inferior in talent, would be inferior in intelligence, would be inferior in all those great and glorious qualifications which had so long distinguished the Bar of England."

Psychologically this passage is wonderfully interesting. Even when I was at the Bar elderly judges arrived on circuit so soaked in the tradition of metropolitan vanity, that it disturbed their equanimity when they found provincial barristers fully capable of restraining them from unnecessary error. What would have happened to Lyndhurst if he had encountered Gordon Hewart or F. E. Smith when they were juniors at Manchester and Liverpool it is not possible to imagine. Probably he would have been converted about provincial barristers as he was in his later years about County Courts.

Brougham got his bill through committee and on July 9th, 1833, it came up for third reading. The business had now become a personal contest between Brougham and Lyndhurst, who set out on his Perseus crusade to rescue the Bar of England. I do not suppose anyone who listened to the clash of their arguments was really interested in Andromeda. The audience were wildly excited about the contest, but all they really

cared for was to see whether the old dragon of a Chancellor would fell his opponent with a foul blow from his tail, or the elegant Perseus stick his ugly enemy daintily and accurately between the appropriate ribs. It was a noble fight worthy of the finest traditions of the Westminster Ring. The result of the division was a tie. Contents, 81; Non-Contents, 81! But proxies were called. Brougham held but 41. Lyndhurst produced 53. The Lord Chancellor was counted out.

The battle of Legal Reform was lost, and the rebel bottom-dogs and unfortunate provincials and the obscene rabble that were discontented with the perfections of Westminster Hall, were driven into their hovels to grunt and grumble over the glorious privileges of the English Bar.

But it is curious how in all these matters once the poisonous seed of reform is sown it seems to have a power of resurrection that prevails in time against all opposition however rich and powerful it may be. The conversion of those who in the past have stoned the prophets is also a common incident in history. So that when Lyndhurst became Lord Chancellor in 1841, and soon afterwards brought Brougham's Bill out of the pigeonhole, and tried it, with alterations and repairs, on a new generation, no one was in the least surprised. The die-hards were, however, still frightened of legal reform and the measure was defeated. In 1846 Lyndhurst tried again. After all, it was a bill that was going to give the Lord Chancellor the immediate patronage of sixty judgeships, and Lyndhurst had now the enthusiasm of a convert to the new religion. This

time he succeeded, but before he could place his bill on the Statute Book, his government went out, and the honour of establishing County Courts fell to the new Chancellor, Lord Cottenham. Brougham had at least the satisfaction of seeing his stolen clothes restored to the Whig party, and the Tadpoles and Tapers, who followed that party, rejoiced that all Lord Cottenham's appointments to the first County Court Bench were, with the exception of a draftsman with a first mortgage on the Act, all "good men and true" of undoubted Whig principles!

The new County Courts were successors in title of the old County Courts, with their ancient jurisdiction up to the amount of forty shillings, which still survived in parts of the country. To those who have faith in hereditary virtue and a love of ancientry, it will be interesting to know that the County Court of to-day is a legal descendant of *Curia Comitatus,* the oldest court in the kingdom. The County Court of England was flourishing before the Courts at Westminster were erected, and continues to flourish since those Courts were demolished. Indeed, it seems probable that as a Court for the trial of causes at first instance, it will continue to function after the Courts in Fleet Street and the old Assize Courts have put up their shutters, because as a business proposition it is cheaper and speedier and the quality of its justice is at least equal to that of the High Court, whilst the quantity is superior in bulk and promptitude of delivery.

I have always rejoiced that Parliament in

creating the new County Courts expressly pointed out in the preamble to the Act of 1847 that the "County Court is a court of ancient jurisdiction" and that inasmuch as it had become "dilatory and expensive" it was necessary to replace it by something that would be speedy and cheap. But it was not to lose its old ideals. It was still to cater for the poor and it was to live among its people after the way of its Saxon ancestor.

If you wish to read about the ancient County Courts you will find much entertainment in the pages of Glanville, Bracton, Britton and Fleta. It seems to have had cognisance of pleas of the Crown and indictments in very early days and, of course, 40/- in Saxon times had the makings of a very doughty law-suit. But Normans were naturally suspicious of so popular a tribunal, Magna Charta reduced its powers, and when Lord Cottenham resuscitated it there is no doubt it had nearly dwindled out of existence.

But it was not defunct. The County Court of York had a book of practice, published as late as 1830, in which Mr. Anderson, the author, writes learnedly about the Courts. And to prove that the office of "County Clerk"—the judge appointed by the Sheriff to try the causes—was a very important one, Mr. Anderson tells us what Fleta had to say about it. According to the *Dictionary of National Biography,* there is no such person as Fleta, but then the Dictionary takes the same view about Robin Hood and may take the same view about you or me later on. My old and trusted legal lexicographer, T. E. Tomlins, Esq., says, on the other hand, that Fleta was a

pseudonym for a County Court Judge who wrote the book whilst in the Fleet Prison. And if he was detained there for debt, it goes to prove that in ancient days the salary of the office was much in the same relation to the cost of living as it is to-day. Be that as it may, Fleta says that in appointing a Judge or County Clerk the Sheriff is to discover "a circumspect and faithful clerk, a prudent and discreet man, condescending, humble, peaceful, and modest, and one who is well acquainted with the laws and customs of the County and the duty of a County Clerk."

And what encourages me in these old-world books is to find that the ideal of those who had the responsibility of patronage many hundred years ago was the same as it is to-day, for it is part of my thesis that in linking up modern reforms with the earliest and best ideals of our past we are working on healthy lines.

The new Act of 1846 increased the jurisdiction of the County Court from 40/- to £20 and provided judges, registrars, and bailiffs to carry out the new duties. The reform was a success from the start and has remained a success to this day. To appreciate how, in the teeth of the opposition of the Bar, timid legislators handed over stray sops of new jurisdiction to satisfy the craving for justice in provincial centres would necessitate a catalogue of statutes that would merely weary the general reader. The jurisdiction rose by increasing bids from £20 to £50 and £100 in ordinary cases and £500 in Equity and even larger amounts in Workmen's Compensation and Company matters. The Courts have now perhaps

the most varied jurisdiction in the country and, with the exception of a few matters, like breach of promise, libel and divorce, there is no civil proceeding that does not come within their ken. Some day all actions will be commenced in the County Court and if necessary removed to the High Court for, as a writer in the *Law Quarterly* remarked about the many statutes giving jurisdiction to the County Court, "the only general principle to be deduced from them is that the simpler an action is to try, the less jurisdiction the County Court has to deal with it."

Lord Lyndhurst was right in his forecast about the extension of provincial Bars and the gradual destruction of centralised courts in London, and he was also right in his belief that the profession would put up a good fight for its privileges. But to-day the battle is over and though the four headquarters of the Bar, the Inns of Court, remain and should always remain, in their ancient strongholds, those young soldiers of fortune, who have belief in their power to make good on the field of battle, naturally turn their faces to the provinces where they are not so often called upon to play powder-monkey to an elderly gunner in the front line, but can let off guns on their own and take a fighting part in the mimic warfare of the legal drama.

The legal statistics of to-day are so meagre and inefficient, not because of any want of care on the part of the editor, but merely, as I understand, because the country cannot afford to print useful statistics, that to compare in money or cost the amount of work done in the High Court and in

the County Court is no longer possible. But in 1913, when statistics were available, I found out that in Kent, which before the County Court era depended almost entirely upon the Assizes for justice, the lawyers and the public had transferred all their custom to the County Courts.

In 1913 at Maidstone Assizes fifteen actions were tried and £1285 recovered. In the High Court registries, which are officered by County Court registrars, £3702 was recovered, and in Kent County Courts £37,024 was recovered. To put it in another way the work formerly done in the High Court is now done in the County Court. Moreover, the authorities seek to make the County Court self-supporting by charging high fees.

Brougham entered a protest against taxing poor suitors, and the injustice of such a practice has been recently recognised in matters under the Workmen's Compensation Act where fees are no longer exacted. In compensation cases, speaking generally, an applicant had behind him a powerful union ready to find money if it was needed, and no doubt these important bodies were able to put forward the case of injured workmen to cheap justice with special force. But on what principle organised workmen should pay no fees, and far poorer and more needy individuals should be taxed to provide them with judicial services, it is hard to say. Of course it is all to the good to get rid of taxation of any class of suitor, but in removing all fees from Workmen's Compensation cases and continuing them for other poor suitors the authorities seem to have yielded to force what they would not and have not granted

out of justice and compassion to those in need. Moreover it must be remembered that although these fees were originally paid by workmen they were ultimately recovered in most cases from insurance companies, so that their remission was in effect a valuable gift to these wealthy corporations.

Brougham's ideal was a sound one and he laid down as a principle that at all events the judges, registrars and clerks should be paid for by the State. He would have desired free Courts but the taxpayer had to be considered and some fees would, he thought, have to be paid by suitors. Of recent years the fees of suitors have been increased, but the surplus made in this way has gone into the pocket of the State and has not been applied to the relief of the suitors or the betterment of the Court or its servants.

In 1922 the State used to pay about £200,000 a year for judges and buildings. It was then stated that these amounts, totalling in that year £204,954, were "net charges borne by the State irrespectively of the fees received in the Courts, and are therefore excluded from the total against which the fees should be set."

This principle ought always to be maintained, and the official accounts should be published as they were in 1922, to show the burdens borne by the State and the burdens borne by the suitors. Recent accounts treat the County Court as a concern that is to earn its own living by taxing the suitors, which is incorrect, because they show the Courts making a loss whereas they are really making a profit.

The Treasury have stated that in their opinion "the balance between expenditure and revenue of the County Courts should be adjusted on the basis that the State should bear the cost of the Court buildings and the salaries, pensions, and travelling expenses of the judges, and that the rest of the expenditure should be defrayed by the suitors' fees." The accounts should continue to embody this principle and not debit these special expenses to suitors' fees.

The new scale of fees was based on that statement of principle. From 1903 down to the war, accounts prepared by the Treasury on that basis always showed a small surplus. Accounts kept in the same way as the 1922 accounts, founded on the official principle stated above, with the State debited with the judges' salaries and the buildings, would show a surplus in the years 1923-1926 of well over £250,000.

I do not agree that the Treasury principle puts a sufficient proportion of cost on the State, but I am satisfied that the principle as stated ought to appear in the accounts. For those who are interested in these things I have set out in *Appendix A* the two methods of keeping the accounts.

It may well be that the present form of keeping the accounts correctly represents the mind of those advisers of the State, who would wish to see the suitors taxed for the costs of all services rendered to them. But that was not Lord Brougham's ideal, it is not my ideal, and in so far as the Courts are, as they were originally intended to be, poor men's courts, it is not the Gospel ideal.

It may be said that these things are merely matters of rendering to Cæsar what is due to Cæsar. But does Cæsar know anything about this business? I doubt it. Many people I have talked to on the matter, who are really interested in it, have been surprised to learn that the County Courts were not an increasing burden upon the State, but of recent years, if the accounts were kept as in 1922, they would show a surplus.

I cannot agree that such matters are necessarily outside the sphere of Gospel principles. To my mind a clear understanding about the incidence of fees and costs in relation to the taxation of the poor client, and the remuneration of the minor officials, can only be arrived at by studying them in detail and the way of reform is to remove the burden from the weak to the strong.

The Courts should be open and free to all poor suitors. They are already open to workmen seeking compensation. Why should they not be open to other and poorer folk seeking justice? The State should contribute a much larger share of the expense to-day than it did formerly, and when the fees charged make profits they should be devoted to better pay for the humble officials, including the judges, who do so much to make the Court useful to its poorer clients. There is abundant authority for this view of the matter, for are we not expressly told that the labourer is worthy of his hire, and did not St. Paul on more than one occasion uphold the ancient law against muzzling the mouth of the ox that treadeth out the corn? As for the duty of the State's Courts of Justice to hear the plaint of the poor without

exactions, that seems to me unarguable to anyone who accepts the Gospel message in any form whatever.

It would be interesting to show by statistics the enormous success of the County Court as a business institution, and to show how its value to the State and the commercial world might be multiplied. But I have dealt with that matter in the past and I am rather weary of it and, after all, business men can look after themselves.

The general principles on which Courts of Justice should be managed are the same to-day as they were in the days of Brougham and, indeed, the same as they were in the days of Moses. You remember how Moses, like Lord Lyndhurst, attempted to run a centralised High Court with a centralised Bar and wanted to try all the cases himself. The result was what it always has been —a muddle of injustice.

When Jethro, Moses' father-in-law, came and found him cluttered up with arrears, he pointed out to him, as Brougham pointed out to Lyndhurst and his friends, the absurdity of his proceedings. "The thing thou doest is not good," he said. "Thou wilt surely wear away, both thou and this people that is with thee: for this thing is too heavy for thee; thou art not able to perform it thyself alone."

Then Jethro explained the County Court system in detail to Moses, and Moses, like a sensible man, "did all that he had said." Indeed, there is not, and never has been from a business point of view, anything more to be said about it, and any business organiser following the Jethro

principle and applying it with sympathy and intelligence to the wants of both business men and the poor, could largely increase and multiply the business value of the County Court to the whole community.

The general lines of reform, therefore, are obvious and well-known. Before long the County Court will become an integral part of the High Court of Justice and all cases will be commenced in the County Court and most of them will remain there by the choice of the parties. But the commercial and business evolution of the County Court, though satisfactory to look back upon for anyone who has played a part in it, is not the matter in hand.

Now that we have before us a summary and picture of its growth, I want to remind you that in its origin it was to be a Court for the poor, and I must now proceed to describe the law it administers, the methods of its procedure and how far these things are, or can be, based on Gospel teaching.

CHAPTER IV

THE STORY OF IMPRISONMENT FOR DEBT

A prison is a house of care,
A place where none can thrive,
A touchstone true to try a friend,
A grave for men alive.
Sometimes a place of right,
Sometimes a place of wrong,
Sometimes a place of rogues and thieves,
And honest men among.

Inscription in the old Prison of Edinburgh.

I PLACE imprisonment for debt in the foreground of this landscape of our legal wilderness because, to my mind, there is, on the civil side of our law, no fouler abomination and no more unclean relic of barbarism, than the legal procedure by which we exploit the terror of prison to screw money out of the poor. The fact that it is upheld by the official and the less reputable of the commercial classes does not alter its character. Our imprisonment for debt to-day is not only a relic of slavery, it is actually an existing form of slavery, and degrading to the community that permits it as well as to the individual that uses it.

If you believe in Gospel teaching you will probably agree that slavery is incompatible with the words of the Master concerning our duty to the poor and the oppressed. To my mind the question of the abolition of imprisonment for debt is an acid test of a citizen's belief in any endeavour to give practical effect to the Gospel in legislating

for the poor. A Christianity that tolerates any form of slavery, or chattel ownership of men or women, or cruelty to children, is a form of religion which, to my humble thinking, not only denies the teaching of the Master, but renders impossible any belief in its divine origin or intention.

I can understand anyone saying that the teaching of his religion is not for use in the week-day world at all, and that practical business men must decide business matters on lines of expediency and without considering their righteousness. Indeed, only on these lines can you account for the apparent brutality of the prelates who voted eagerly against abolishing capital punishment for the crime of stealing five shillings' worth of goods in a shop, and other similar measures of mercy. But you are entitled to ask even these pagan legislators: "What mean ye that ye grind the faces of the poor?" And with regard to any Bill for the abolition of imprisonment for debt, I shall be able to show beyond doubt, that even from the lowest grounds of commercial expediency and financial economy a bishop may safely indulge his Christian bias by voting in favour of the measure. Granted that the Gospel should be the basis of our law, then imprisonment for debt must go.

The official apology for retaining imprisonment for debt is, as students of folk-lore and psychology would expect, the same excuse that was put forward more than a hundred years ago in favour of slavery. First, it was said there was no such thing as slavery, and in the alternative it was strongly asserted that the slaves liked it and would be very badly off if it was abolished. But

all the evidence on these subjects was given by the slave-owners and overseers, and the actual slaves were not heard. This precedent we have followed in all our official enquiries relating to imprisonment for debt.

You will be told that imprisonment for debt has been recently discussed by commissions in 1894 and 1909 and the Commissioners approved of the system. That is very true, but the Commissioners heard only the Judges of the Courts, the wisest of whom condemned the system roundly, and the registrars who were paid by the fees wrung from the poor, and the debt-collectors who made their living under the system, and the lower-class traders who made use of it. All the little pinchers of the poor were there, but not the Little Sisters of the Poor, or the Parish Priest, or any actual slave debtor, or anyone who could testify to the effect of the degrading system on the home and the lives of women and children who were daily affected by it. These matters were placed before the Commissioners by some of the Judges, whose imaginations enabled them to see beyond the fog of rules and orders and official statistics, and could give at hearsay a few facts of human misery stated, of course, without prejudice to the more commanding interests of tallymen and moneylenders.

The understanding of this business of imprisonment for debt will, I fear, take you a little time. It has already taken me and many other wiser and stronger men in the past a great deal of time. Fifty or sixty years is nothing in the history of the reform of a flagrant abuse. The case has to be

stated and re-stated to each succeeding generation. Even the walls of the most accursed city in the world cannot be destroyed at the first assault. You have to go walking round them from day to day, and you are not allowed to shout until you are bid to shout. I am as certain that imprisonment for debt will be abolished in this country as I am certain that it was abolished in Scotland in 1880. But it will not be done unless someone walks round the citadel of it continually and blows trumpets and threatens. I should like to be in at the shouting, but knowing the dilatory ways of governments I should think it is improbable. Nevertheless, if you will read the argument and the play which follows it, you will recognise that there will be shouting when the curtain falls on a happy ending.

Carlyle tells us to examine history, for it is philosophy teaching by experience, and in dipping into the pages of history for reference to imprisonment for debt and its direct relation to slavery I begin with the Old Testament.

Let us remember with gratitude the remarkable action of Elisha in the matter. Elisha went the length of performing a miracle to pay the bailiffs out. There are many poor widows in the mean streets of our own cities looking down the road for the Elisha of to-day who cometh not. Miracles do not happen nowadays; people don't do such things. Still it is interesting to know that there was imprisonment for debt in Elisha's day, just as there is now—for the poor and only for the poor—and it is encouraging to know what Elisha thought about it.

What happened was this:—

The County Court bailiffs of the County Court of Israel, holden at Samaria, went with a body-warrant to seize the two sons of a poor widow on behalf of a creditor of her late husband, just as they might do to-day.

Fortunately, the deceased had been a servant that did fear the Lord, and Elisha, hearing of the trouble, went down to the house, and in that simple, kindly way that the old prophets had of putting little troubles straight for members of their congregations, and also no doubt to show the contempt he had for the proceedings of the County Court of Samaria, sent the widow out to borrow empty vessels of her neighbours. These he miraculously filled with oil of the best, and the only pity of it was that there were no more vessels to fill, for Elisha was in form that morning, and was sorry to stop. When it was over he said to the widow: "Go sell the oil and pay thy debt and live thou and thy children of the rest."

I am very fond of that story. I like to believe it really happened. I wish it could happen to-day, for there are many poor women in much the same straits as that poor widow. I have never heard the text referred to in churches and chapels, and I am not surprised. A minister who preached about it would have to explain that he could not do miracles of that kind himself, and if he were to do the next best thing and preach about the iniquity of imprisonment for debt straight from the shoulder—as I am sure Elisha would have done—the respectable credit draper, the pious grocer, and all the noble army of tally-men would get up

in their pews and walk out of his church or chapel in disgust.

And I will pass away from scriptural precedents to others which, though to me they possess a less compelling sanction, will perhaps have more weight with men of the world. In the history of ancient Greece the debtor played an important part. Let me remind you what the Archon did.

The particular Archon I refer to is Solon.

Solon knew all about imprisonment for debt, and his evidence on the subject is most convincing. It is well to remember, too, that Solon was a business man—I have this from Grote, who got it, I fancy, from Plutarch. Exekestides, Solon's father, a gentleman of the purest heroic blood, "diminished his substance by prodigality," and young Solon had to go into business; in modern phrase, he "went on the road," and saw a lot of the world in Greece and Asia. I mention this because I am always told that if I knew anything of business I should understand the necessity of imprisonment for debt. Solon was emphatically a business man. Solon was also a poet, which perhaps was his best asset as a social reformer, but he was no sentimentalist if, as some say, when he was a general attacking a rebellious city he ordered the wells to be poisoned to put an end to the strife.

When Solon in a time of grand social upheaval was made Archon, he found the poorer population, including particularly the cultivating tenants, weighed down by debts and driven in large numbers out of freedom and into slavery. Let me set down the condition of things in the careful

words of Grote lest I appear to exaggerate.

"All the calamitous effects were here seen of the old harsh law of debtor and creditor—once prevalent in Greece, Italy, Asia, and a large portion of the world—combined with the recognition of slavery as a legitimate status, and of the right of one man to sell himself as well as that of another man to buy him. Every debtor unable to fulfil his contract was liable to be adjudged as the slave of his creditor, until he could find means either of paying it or working it out; and not only he himself, but his minor sons and unmarried daughters and sisters also, whom the law gave him the power of selling. *The poor man thus borrowed upon the security of his body* (to translate literally the Greek phrase) and upon that of the persons in his family."

The words I have italicised are interesting as exactly defining the principle of all imprisonment for debt. A wage-earner to-day who runs up bills with tally-men and grocers obtains credit upon the security of his body.

I have heard from the wife of a poor debtor an apt but unconscious translation of the Latin maxim, *Si non habet in aere luat in corpore*. Her allegation being that a tally-man had said to her husband, "If I canna 'ave yer brass I'll tek yer body." In the north country, among the more old-fashioned bailiffs and their victims, warrants of arrest are commonly known as "body warrants." No doubt the imprisonment of to-day is different in degree from the slavery of debtors in Greece five hundred years before Christ, but it is absolutely the same in principle, founded on the same

idea, and worthy to be maintained or abolished by the citizens of this State for the same reasons that were found good by the citizens of Athens.

Thus it is that it is worth while finding out what Solon thought and did about it. Solon had a pretty wit in titles. He called the bill he drafted *Seisachtheia,* or the shaking off of burdens. The relief which it afforded was complete and immediate. It cancelled at once all those contracts in which the debtor had borrowed on the security of his person or his land; it forbade all future loans or contracts in which the person of the debtor was pledged as security; it deprived the creditor in future of all power to *imprison* or enslave or extort work from his debtor, and confined him to an effective judgment at law, authorising the seizure of the property of the latter.

This was indeed a shaking off of burdens. For here we find, not only was imprisonment for debt abolished lock, stock and barrel, but a law was enacted protecting the land of the cultivator from being seized for debt. This is akin to what in some of our colonies is called a homestead law, and I have always contended that in the interests of the State the few sticks of furniture which a poor man and his wife and children always call "the home" should be protected from arrest for debt, just as the bread-winner's body should be exempt from imprisonment. I could have got along with Solon.

And when one is told the old tale, that continues to be put forward by those who wish to retain imprisonment for debt—that the workman will starve for want of necessary credit and that trade will stagnate owing to timid creditors re-

fusing to trade—let us remember with pleasure that that was not what the Archon saw as a result of his beneficial measures. On the contrary, the testimony is overwhelming that there grew up a higher and increasing respect for the sanctity of contracts. The system of credit-giving, and especially of moneylending, assumed a more beneficial character, and "the old noxious contracts, mere snares for the liberty of a poor free man and his children"—the flat-traps of to-day—disappeared. What happened in Athens was that, although there were some fraudulent debtors, the public sentiment became strongly in favour of honesty, and it is agreed that the prophecies of Solon's failure were not made good, and "that a loan of money at Athens was quite as secure as it ever was at any time or place of the ancient world." Furthermore, it is acknowledged by the better authorities that what I expect and believe will happen in the mean streets of England, when imprisonment for debt is abolished, actually did happen in Athens, and, to use Grote's words, "the prohibition of all contracts on the security of the body was itself sufficient to produce a vast improvement in the character and conditions of the poorer population."

We must now turn to the consideration of the Roman law against the debtor because it is to a certain extent the law upon which we have modelled our own. Upon notice from his creditor he was bound within thirty days to discharge his debt. If he did not do so his creditor carried him off in chains. Note, however, that he was not a slave, but his creditor had to keep him in chains

for another sixty days, during which time he had to bring the debtor out on three successive market days to give his friends an opportunity of paying up and releasing him. The creditor had also to provide the debtor with a pound of bread a day. In these socialist days we take that burden off the creditor's shoulder and a generous State feeds the imprisoned debtor at the cost of the community. On the third market day, if the debtor's friends were still backward in coming forward, the debtor was killed and thrown into the Tiber, or his body was divided among his creditors, which was the only dividend they received. If there was any market for him he was sold into slavery. It seems that in the very early days of Ancient Rome each creditor had a right to carve his pound of flesh from off the debtor. Portia's point against Shylock:

> . . . nor cut thou less, nor more,
> But just a pound of flesh: . . .

was foreseen and provided for in the drafting of the Twelve Tables. It is enacted in the Third Table: "After the third market day the creditors may cut their several portions of his body: and any one that cuts more or less than his just share shall be guiltless." Unless, therefore, the laws of Venice amended or repealed the Twelve Tables, Shylock's case seems to have been wrongly decided. What is at least curious is that the ancient idea of debtor and creditor law embodied in those ancient statutes should be the foundation of one of the most popular plays in the English language.

Some good people have found a difficulty in

understanding Shylock's outlook on life and cannot comprehend why a creditor should enjoy killing a debtor. But, after all, it is equally strange why a creditor should take pleasure in imprisoning a debtor. Yet to-day hundreds of debtors go to prison because they have not means to pay their creditors. The difference between killing and imprisoning a debtor is a difference in degree only. The principle is the same. The object of the creditor is, perhaps, in the first place, to get repaid his debt; when he finds this is impossible the death or imprisonment of the debtor merely satisfies his desire for revenge. The ancient Romans were, in one way, a more practical people than ourselves, for they threw the costs of this revenge direct upon the creditor, whereas we throw it upon the taxpayer.

I am glad, however, to remind you that, in historical times at all events, the Romans did not carry out the law of the Twelve Tables to its uttermost cruelty. The popular way of dealing with a debtor seems to have been to sell him into slavery and then to credit him in your ledger with the price he fetched—less the out-of-pockets—much as we do to-day when we issue execution against chattels. In later years the slavery of debtors was abolished and imprisonment much like our own was substituted, but the Romans never had a law-giver as wise and powerful as Solon to get rid of imprisonment for debt altogether. And the Roman imprisonment for debt in some shape or other runs through the social systems of the Middle Ages, being harsh in one place and less cruel in another, and mitigated at

one date and aggravated at another. Always we find a feeling among the more thoughtful of mankind that it is in itself a harsh and cruel system and imprisoned debtors have always been regarded as proper objects of charity.

Fynes Moryson, who was in Rome in 1594, tells us of a practice which then prevailed in the Pope's State which might be introduced into Protestant England to-day, in a lively belief that it would be in accordance with the tenets of the Christian faith, and a certain hope that it would relieve many a poor wretch in misery and despair. "If," he writes, "a man be cast into prison for debt, the judges after the manner visiting frequently those prisons, finding him to be poor, will impose upon the creditor a mitigation of the debt, or time of forbearance, as they judge the equity of the case to require, or if by good witnesses they find the party so poor as really he hath not wherewith to pay his debt, they will accept a release or assignment of his goods to the creditor and whether he consent or no will free the debtor's body out of prison."

At all periods of time we find the same uneasiness in the minds of rulers and governors about keeping a poor man in prison for debt when he cannot pay. The governors of English jails will tell you that 90 per cent of the debtors lying in prison to-day for civil debt, rates, maintenance, bastardy orders and small fines are too poor to pay. Yet here in England our legislators cannot even get as far as the Papal State of the sixteenth century in an exercise of charity to the poor and distressed. Pending the abolition of imprisonment

for debt, a Home Office visitation with power to release the really unfortunate on the lines of the practical experiment which Fynes Moryson wrote home about three hundred years ago would be something to be going on with.

All civilised states have now finished murdering, torturing or selling their debtors into slavery; most civilised states have also ceased to imprison debtors. We have abolished imprisonment for debt for all people of means who escape from the terror through the friendly portals of the Bankruptcy Court. But we retain the punishment for the poor and, indeed, only for the poorest of the poor. How this blot on our civilisation was caused and why the shame and disgrace of it is allowed to remain, require a short essay upon the history of imprisonment for debt in England.

To begin with, it may be news to some lawyers to learn that in the merry days of Henry III there was no imprisonment for debt at all. If Godfrey the garlic seller or Hogg the needler owed Rose of the small shop a tally for weekly purchases and would not pay, Rose, poor woman, could not get an order to send them to jail. Yet there is no evidence that trade was thereby injured, or that there was any difficulty in Rose regulating her credit-giving, or in Godfrey and Hogg and the rest obtaining as much credit as they deserved. The interesting fact for us to remember is, that as, in nearly all civilised countries to-day except our own, imprisonment for debt has been abolished, so there was a period in our own history when we got along without it.

Now the reason that a creditor could not im-

prison a debtor in those days was that a common citizen had only a limited interest in his own body. The fighting property in his body was vested in the King, and the labouring property in his body vested in his lord, and these proprietors were not going to have their rights and property in the body of their subject and vassal interfered with, because he had been foolish enough to run into debt with another subject and vassal who wanted his money.

You will, indeed, find that the whole history of the law and the poor, seems to be a long struggling of the poor out of slavery and serfdom, where they had a certain guaranteed amount of food and protection from their masters, similar in nature to that given to the ox or the ass or anything that was his, into a state of freedom, so-called, in which they had given up their rights to food and protection without getting any certain rights of wages or the equivalent of wages in return. We are in the middle of adjusting these things to-day, and the story of imprisonment for debt, and why it is retained at the present only for poor people, is a page in the curious history of English social progress.

As long as the debtor was a vassal having certain duties to perform for the lord of the manor, his lordship thought him as much worth preserving as the game or venison within the curtilage of his park. It was for this reason you could not take his body in execution. As you may know, when you obtain a judgment in a court of law the next thing to do is to proceed to execution; that is to say, the judge having given you

judgment, a writ is granted to you whereby you get the sheriff to take your part and seize for you either the goods or body of your opponent. The history of these ancient writs is full of amusing folk-lore for those who love such things, and we still call them by their old dog-Latin names, not for any scientific purpose, but for much the same reason that the doctors write their prescriptions in hieroglyphics and priests mumble Latin or English—but always mumble—in a cathedral. It is the essence of a profession that it should be mysterious and incomprehensible, otherwise the common herd would not respect it and pay its fees.

Now the two writs of *fieri facias* and *capias ad satisfaciendum,* written in legal prescriptions *fi.fa* and *ca.sa.,* were warrants to the sheriff to seize the goods and the body of a debtor in execution. But prior to Henry III you could not get a *ca.sa.* or body warrant in a case of debt, so there was no imprisonment for debt.

The long story of the statutory evolution of imprisonment for debt from the Statute of Marlbridge 52 Henry III c. 23 to the Debtors' Act, 1869, is full of legal and social interest. It is enough to know that little by little the principle of the right of one man to seize the body of another became recognised by statutes and custom until the wrongs it caused reached such a scandalous pitch in the eighteenth century that some reform became inevitable.

One peculiar incident attaching to the system was so obviously opposed to all English ideas of liberty and justice that it is hard to understand

how it was allowed to prevail for so many years. I refer to the bane of Mr. Micawber's existence, the imprisonment for debt on mesne process. Mesne process merely means middle process, and the quaint idea of our ancestors was that a creditor who made an affidavit that a fellow citizen owed him money should be allowed to lock him up during the course of the proceedings until the case could be heard and it was decided whether any money was really owing. It was as popular with the sharks of the eighteenth century as our present imprisonment for debt is with the moneylenders and tally-men of to-day. Nor did it trouble the consciences of wise men, for when Boswell claimed a superiority for Scotland over England on the ground that "no man can be arrested there for debt merely because another swears it against him, but there must first be the judgment of a court of law," Wilkes and Dr. Johnson made no effort to discuss the matter seriously, but overwhelmed their young friend with coarse jests on the savagery of his native land.

The ordinary citizen cared nothing about it. But there were two schools of thought about the matter—among those that gave it any thought—just as there are to-day. One school was clear that to tamper with the practice of imprisonment for debt meant ruin to trade; the other held—what I believe to be in accordance with right action and Gospel teaching—that no citizen ought to be allowed to obtain credit on the security of his body any more than he should be permitted to sell himself as a slave.

Until the end of the eighteenth century the harshness and cruelty of imprisonment for debt received little attention. The history of the debtors' prisons, the Fleet, the King's Bench, the Marshalsea and the City Compters, are pages of the story of our law that no one can read to-day without shame. Yet the Howards and Frys, who called attention to the facts met with just as little encouragement and attention from the rulers of the country as anyone does to-day who desires to put on the coping stones and complete the work, the foundations of which were laid by these great reformers. It was the devoted men and women who hungered and thirsted after right action towards the poor and afflicted, and gifted writers like Smollett and Fielding, who roused the consciences of their readers by their description of the miseries of debtors in gaol, that first caused the abolition of these wicked things to be discussed. It was not until a later date that lawyers like Romilly and Brougham raised their protest against these iniquities and they were regarded with distrust by the compact majority of their profession. As for the higher clergy, I cannot recall one who took upon himself the mantle of the prophet and announced that the Lord had sent him "to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound."

When superior official persons condemn the activities of what they call the stunt press in publishing details of crime and distress, I wonder if they think of the mass of human misery that continued for centuries because it was no one's

business to expose it and there was no method of enlightening citizens about the sins that were committed in their name. Hundreds of tragedies in family life, of broken lives and ruined homes were caused by imprisonment for debt, but they took place behind closed doors and the world only heard of them by slow degrees. At length, however, the constant repetition of the miseries of the poor debtors who languished in prison, wasting their lives and eating out their hearts in despair, began slowly to convince the man in the street that there really was something wrong with the world and that the human misery caused by our laws was a standing disgrace to our boasted civilisation. Timid reformers began to think something might be done. The arguments then, as now, were all one way, but then, as now, there was no one to listen to them. Good men had raised their voices to point out the wrong-doing that was going on, and the unnecessary wretchedness that was being caused, but nothing much came of it. There were a few desultory and ineffective movements towards discharging poor debtors, but the matter did not greatly interest mankind, and there seemed to the eighteenth century mind no very clear reason why a debtor once in prison for debt should ever be released.

It was not, indeed, until the beginning of the reign of Queen Victoria, a time of great hope for the poor and distressed, a period which has not inaptly been called "the springtime of social reform," that any practical movement was made. I myself keep March 31st as the birthday of the movement for the abolition of imprisonment for

debt, but anyway it is a red-letter day in the history of English literature and worthy of great honour. For on that day, in the year 1836, the first number of "Pickwick" appeared and there is no doubt that the account of the Fleet prison in that volume has made it the popular text-book of legal reform in these matters. If "Pickwick" in 1836 was not the *causa causans* of Lord Cottenham's Bill to amend the law of insolvency which was introduced in December, 1837, there is no doubt that Dickens' stories of the cruelty of imprisonment for debt supplied the motive power necessary to pass it by rousing the public conscience to insist upon something being done.

For the miserable sights which Mr. Pickwick saw in the Fleet were seen for the first time through the magic of Dickens' pen by his fellow citizens who recognised the truth of his pictures and their own responsibility for the shame and disgrace that was cast upon their country's name.

The Chancery prisoner, the fortunate legatee whose lawyers had had the thousand pounds legacy, and who was in the Fleet, mending shoes for twenty years because the loom of the law had woven a shroud of costs round him and buried him in prison—he was no fiction. His heart was broken when his child died and he could not kiss him in his coffin. There he remained living a solitary lingering death, lonely amid the noise and riot of the Fleet, until God gave him his discharge. This and many another case was before My Lords and known to the intelligent Commons when the question of the abolition of arrest on mesne process came up for discussion in 1837.

It is to Lord Cottenham, as I have said, that we owe the Statute for the Abolition of imprisonment for debt on mesne process. It was Lord Lyndhurst who carried in weighty petitions from the business world to convince the House of the unpopularity of the measure. And quite certainly vocal selfish interests showed that it was unpopular. The petitions were at least ten to one against the Bill. There was no more enthusiasm about mitigating imprisonment for debt then than there is to-day. The history of these things is always the same; the traders objected to the abolition of imprisonment for debt, the newspaper proprietors strenuously opposed the reduction of the Stamp Acts, the doctors fought against national insurance. Yet, when the horrible thing is done, we find them smugly prosperous on the reform.

Lord Brougham, who from the very first had always held instinctively the true faith in these matters, pointed out to a reluctant House how credit was imprudently given to the real injury of the customer who is induced to buy what he cannot pay for, and to the injury of those who do pay what they do owe, but who pay the dearer in proportion to the bad debts which the tradesman is led to let others contract with him. Further, he emphasised the wrong done by clothing an insolvent person with an appearance of credit by lending him more goods which serve as a bait or decoy to others that have not yet trusted him. He laid down the principle that debt should never be treated as a crime, and still less as a crime to be punished at the sole will and pleasure of the

creditor, and eloquently called on the peers to wipe out this foul stain from our civil code.

Arrest on mesne process having been abolished a Commission was set up in 1839 to inquire and report upon the whole system of imprisonment for debt. When new measures came on for consideration Brougham, with savage eloquence, jeered at his opponents whose Cassandra prophecies of ruined trade had proved to be mere foolish foreboding. Bit by bit the reformers had their way until in 1869 they passed a bill for the abolition of imprisonment for debt.

This Bill having passed, many good people think that imprisonment for debt was abolished, but this is not so. Some years ago I analysed the legal history of this measure carefully, but I do not propose to reprint my survey of the business, for it is only of technical interest. When you imprison a poverty-stricken man because he owes money, whether he is imprisoned for debt or, as some ignorant folk say, for contempt of court, is no matter to him, poor fellow, and the legal difference is scarcely entertaining even to pedants.

Shortly, what happened was this. Parliament as a whole was out to abolish imprisonment for debt. There were a lot of old-fashioned folk then as now, who wanted to retain it. Compromises were made. It was agreed that there should be abolition, it was also agreed that there should be exceptions. The exceptions readily granted were cases of fraudulent trusteeship and the like. This was not enough for the old gang, so the promoters of the reform threw in poor persons owing small debts. The poor had as few friends

in Parliament as the fraudulent, and they were huddled together into the same bundle of exceptions as a sop to the opponents of the Bill. When folk describe our present system in the County Court as anything other than imprisonment for debt a legitimate offspring of its Plantagenet ancestor *capias ad satisfaciendum*, they do it in ignorance of the legal and political history of the Debtors' Act, 1869.

From 1869 to the present there has been no further reform. Many hope that there never will be any, but for my part I have no doubt it will come along, not in my time, perhaps, but whenever the right moment may be. From 1869 until to-day over three hundred thousand English citizens have been actually imprisoned who have not been guilty of any crime whatsoever. They have been imprisoned mainly for poverty or, if you will, for improvidence—that blessed word which so insidiously describes in the poor, their failure in economic asceticism, their lack of cold self-denial of luxury and extravagance, their absence of patient thrift and simplicity of life—features which are never wanting in the beautiful lives of those social classes above them that the poor must learn to look up to and to imitate.

CHAPTER V

THE SCREW SYSTEM

And forgive us our debts as we forgive our debtors.
Matthew vi, 12.

The Debtors' Act of 1869 was, as Sir George Jessel said, intended to abolish imprisonment for debt and to substitute imprisonment for the fraudulent and dishonest debtor only. But the opponents of the measure obtained a saving power of committal for small debts, or as it should have been called a saving power to imprison the poor, and any person who makes default in the payment of a debt or instalment due in pursuance of a judgment, if it is proved to the satisfaction of the Court that he has *or has had* means to pay and neglected to pay, may be committed to prison for six weeks.

Before the War there were over a million small debt summonses issued every year and nearly five hundred thousand judgment summonses issued of which about a quarter of a million were heard. It was and is a wholesale business. I will deal later with the effect of the War on the matter, but already we are drifting back to pre-war figures.

Credit being given wholesale to people without means and a vast number of unnecessary debts incurred, debt collectors are employed who issue summonses in batches of ten, twenty, fifty or a

hundred to recover the money. These are not served personally on the debtor but left at his home and, of course, often kept from his knowledge by a kind and devoted wife.

The summonses are returnable before the registrar and in an urban Court three hundred to four hundred are often heard in a morning. The defendant seldom appears. His wife sometimes appears. The evidence that the defendant owes the money is of a sufficient but not very exhaustive character and, as in all undefended actions, the proceedings are merely formal; judgment is given and the registrar decides the instalments of so many shillings a month at which the debt and costs are to be paid. The order is then posted to the debtor.

When any instalments are in arrear the creditor applies for a judgment summons. This is served personally and the debtor may appear before the judge but generally fails to do so. The judge then hears evidence of means which is mostly of a hearsay character and makes an order of imprisonment but suspends it as a rule as long as the man pays a certain sum of money a month.

After that the debtor is in the hands of his creditor and if he fails to pay what is ordered his creditor can issue a warrant and send him to jail.

This is the system which Judge Chalmers found at work in Birmingham in 1884 and I found working in Manchester in 1894. The only object of the Act recognised by the Court was "to screw the money out of the debtor," and to get as much money out of him as was possible.

Judge Chalmers condemned it as a bad system, being of opinion that "all sound credit ought to rest either on property or character, and that if you lend to a man or sell goods to a man and do not require him to pay cash, it ought to be either because you know him and can trust him, or because he has visible tangible property which you can seize if he is untrustworthy."

And this great judge agreed with men like Jessel and Bramwell and others who have considered the question from the point of view of national morality and good sense, that it was more than doubtful "whether the law should trouble itself to collect debts which need not have been incurred." And I make bold to say, after my long experience of the business, that the bulk of the burden of debt which hangs round the neck of the poor would never have been incurred but for Sec. 5 of the Debtors' Act, 1869, and the Screw System which it encouraged.

For the best customers of the County Court, indeed the only people to whom the system of imprisonment for debt is of any real service, are those traders who carry on a business which can only be carried on and made to pay by reason of the sanction of the shadow of the jail which is of the essence of the contract.

The tally-men, the moneylenders, the flash jewellery touts, the sellers of costly Bibles in series, of gramophones and other luxuries of the mean streets, these are the class of trader the State caters for. For these businesses are based, and soundly and commercially based, on imprisonment for debt. The game is to go forth with

a lot of flash watches, persuade a workman in a public-house or elsewhere to sign a paper that he has bought one—he always says, silly fellow, that he thought he had it on approval—and when he fails to pay his instalments put him in the County Court. I have known a pigeon-flying working man, earning thirty-five shillings a week, buy a watch priced eight pounds which had a second hand and a stop movement for timing, that momentarily overcame his better sense of economy. Without imprisonment for debt it would not have paid the servant of the Evil One to have led him into temptation.

To these traders the County Court is of real value. They issue their plaints in bundles, they take out judgment summonses in batches, they can afford to have a skilled clerk well versed in the procedure of the Court to fill up the papers, and can run the machine which a complacent State puts at their disposal with very good results to themselves. I remember a firm starting in Manchester with the sale of some sort of horse medicine—good or bad is really no matter. The method of business was delightfully simple. The proprietor travelled round in Herefordshire and Devonshire and persuaded the farmers to try some of the horse medicine. A form was signed which was a contract of sale and a promise to pay in Manchester. This gave the Manchester Court jurisdiction to issue the summonses, which were for sums of under two pounds. Letters came complaining that no contract had been intended, that the stuff was worthless, etc., but no one turned up and judgment went by default. The

success of the business was its ruin. The plaintiff, tired of filling up the forms of the Court and well knowing that none of his customers would pay without process, actually had affidavits of his own ready printed, and this cynical admission of the undesirable nature of his trade—for an honest man would not expect nearly all his customers to refuse to accept goods ordered—led to his undoing. Inquiries were made, one or two farmers were induced to appear and give evidence, and his business career came to an end.

Some time ago I made a careful examination of some 460 judgment summonses taken consecutively. The figures were from the Manchester Court. I found the following were the trades represented:—

Drapers	154
General Dealers	130
Jewellers	60
Grocers	35
Moneylenders	24
Doctors	10
Tailors	5
Miscellaneous traders issuing less than four summonses	42
	460

General dealers, it must be remembered, are traders in a large or small way of business who will sell furniture, drapery, clothes, cutlery, or anything you like, on the instalment system. Their methods of trading are tally-men's methods.

If this list be looked at, it will be seen that the general public make very little use of imprisonment for debt. The substantial shopkeeper is scarcely represented at all. Some of these general dealers it should be remembered are limited companies having numerous agents paid by high commissions and spending large sums in advertising. Their prices are apparently low, but the quality of their goods leaves much to be desired.

Now what worries me is, why should the State keep Courts going for men of this class? The only creditor in that list for whom one can have the least sympathy is the doctor, and the National Insurance Act has now put him on a cash basis, so that in a list taken to-day he would not appear so often. It is clear from these figures that, at a cost to the general body of taxpayers, you are encouraging a bad class of parasite traders to choke the growth of thrift among the working classes.

For unless you make it ruinous to the creditor for the credit to be given you will never stop it. How can a man at work hinder credit being given through the agency of the wife, when the law permits it and caters for it by providing the trader who lives by it with a special debt-collecting machine, without which this class of trader would be impossible? I have known cases where a working man's wife was dealing with nineteen different Scotch drapers. What wages can satisfy such an orgy of drapery as that? How often, too, do men and women buy watches, to pawn them for drink or a day at the races? What is this but an evil and ruinous form of moneylending? And what

makes these things possible among our poor people? The law siding with the knave against the fool; the saving clause for the imprisonment of poor debtors in the Act of 1869. In other words, the Screw System.

It would be misleading if it were thought that all judges were like Judge Chalmers and condemned the Screw System of collecting small debts. In the 1893 Commission Judge Bedwell of Hull described it as a "perfect system." He pointed out that it paid. In his Court he calculated that it paid all the staff and the expenses of his Circuit and gave something to the consolidated fund. He almost wept to think of the loss to the Treasury and the disappearance of registrars and clerks that must ensue if imprisonment for debt were abolished. Judge Stonor said that it would mean a deficit of something like £200,000.

It seems, therefore, to be admitted by these advocates that all this money is squeezed out of the poor by the Screw System. I rather doubt it, and I do not want to exaggerate the burden of the poor. I should expect to find that some of it is traders' loss which goes in to the cost of production and is paid for by the solvent customers. But grant that these authorities are right. The fact that the system pays the Treasury is no defence, if it is proved that the system is a bad and vicious system. I make no doubt the old system of imprisonment for debt by mesne process paid its way, but it was abolished by our grandfathers because it was immoral and cruel.

And the way the Screw System works to-day

is exemplified in a typical case reported in the following letter from the Governor of Worcester prison, which was placed by the Home Office before the Commission of 1908. The Governor writes as follows:

"I have the honour to draw attention to the enclosed order of commitment which, while perfectly in order, might be of use to the Commission which I understand is being held to inquire into imprisonment for debt. The man G.G., a respectable labourer, was sent to my custody for 21 days in default of a payment of four shillings and costs, in all five shillings and ninepence. The debt had been incurred originally by his wife—now deceased. The man is a widower with four children, the eldest of which is 13 years and the youngest two or three years old. The man being sent to prison, the children become chargeable to the parish.

"Consequently the unfortunate man loses his work, the State is put to the expense of his maintenance in prison for 21 days, fares to and from Dudley, &c., for what seems a very small and totally disproportionate amount. In this particular instance, the money has been found for G., and he has been sent back to his family and his work, but I hope that I am not doing wrong in calling attention to this sort of case, as I believe that there is an idea of having the law on imprisonment for debt amended."

There was much evidence of other governors of jails to the same effect. Their prisoners were nearly all mechanics and labourers utterly unable to pay the debt, and if they got released from

prison they owed their release not to the charity of their creditors but to the generosity of their friends and relations. In other words, the Screw System is largely used to blackmail the friends and relations of the debtor.

And of recent years the screw has been improved, as a screw, by altering the prison status of the debtor to his disadvantage. Prior to 1899 a debtor wore his own clothes, and if he liked provided his own bedding and furniture, and had a common sitting room with other debtors. But now debtors are treated more or less as criminal prisoners and are certainly obliged to work. I can understand that, if they ought to be there at all, this is an improvement from the point of view of jail discipline, but it certainly puts more force into the screw. Nor do I suggest that debtors complain of their treatment, and the humanity displayed by the governors of our jails to these unfortunates often leads to their release as in the case cited above.

To put it frankly and brutally, the system of imprisonment for debt is one of legalised extortion and blackmail. Note in the Governor's letter that the debt was four shillings and the costs were one and ninepence. These were made out in this way: 3d. for issuing the summons, 6d. for hearing, and 1/- for the order of commitment. Not dear, you may say, for the services rendered, if they were services. Note, too, that the sentence of twenty-one days works out at a day's imprisonment for every threepence the debtor owed. What sentence would our fashionable bankrupt get at a proportionate rate? Cal-

culate the percentage of 1/9 costs to the 4/- debt. How Falstaffian is the bill! What is the moral worth of a judge's diatribes against blackmailers and harsh and unconscionable moneylenders, when he himself is a daily party to the Screw System which assists similar wrong-doing?

Over and over again I have found that a debtor escaped from going to prison because his relations, or often his wife's relations, found the money for him or put a hand as surety to a promissory note to enable him to get the money from a moneylender. Indeed, what father or mother would see the home of a married son or daughter broken up, and their grandchildren sent to the workhouse, if some sacrifice of their own could save them from such disaster? The screw is indeed well and truly made and as Judge Bedwell says, it is a very perfect system; for the success of it is largely founded upon the eternal verities of self-sacrifice and family affection.

And this consideration is a complete answer to those who will tell you that the number of citizens who go to jail for civil debt is almost negligible. It is true that it has decreased but at the present time the number of non-criminal debtors in our jails is some 11,000, not all for County Court debts, but for those and for payments of rates and taxes and other civil liabilities.

The effect of the War on the system was very interesting. It went the way of other useless luxuries. What happened was this. Debtors and other non-criminal prisoners were wanted as soldiers and it was bad economy to keep them in jail. In 1910 there were 17,460 prisoners whose

poverty did not enable them to pay debts ordered to be paid by County Courts and Police Courts. In 1918 there were 1693, of which only 296 were County Court debtors. Most of the others were the result of "alimentary" orders for maintenance and debts for rates.

One might have thought that bureaucracy would have rejoiced at these figures and sought to have preserved them in the peace that was to come. On the contrary, by way of a welcome home to our gallant defenders, Whitehall prepared a scheme for leading weekly wage-earners to the sacrificial altar of the income tax. They enacted that their quarterly instalments of unpaid tax were to be recoverable as civil debts, and that if not paid on demand a judgment summons could issue and the magistrate could send the debtor to jail. Over one thousand wage-earners were actually imprisoned for income tax debt in 1921.

I agree that public debts for taxes and rates may perhaps be on a different footing from private debts, but I refer to the matter as showing that there is little hope of any help coming from government sources in regard to the abolition of imprisonment for debt, since we find bureaucracy deliberately creating a new class of poor taxpayer, whose incapacity to pay necessitates the adoption of the Screw System if the money is to be collected.

Since the end of the War there has been a considerable increase in debtor prisoners, and there seems no doubt that we are gradually drifting back into the old Screw System of pre-war

days with all its attendant misery and degradation.

It might be of use to have a report from the League of Nations to see if in this matter any other nation of any importance continues this barbaric practice of breaking up the homes of the poor or blackmailing their relations in the interest of creditors. I have not heard of any and though, like any other Englishman, I am ready to defend the institutions of my country with all the unreason of a reasonable man, I prefer to remain silent in the company of foreigners if the matter of imprisonment for debt is referred to.

For in France I find it was abolished in 1867. Since then "no debt in a civil Court can be enforced by imprisonment." In Scotland it was abolished in 1880 except for Crown debts and what are called "alimentary debts," which are mainly debts for maintenance of women and children.

In America where each State has its own laws most States have abolished imprisonment for debt and the more thoughtful publicists and lawyers are entirely opposed to it.

In Germany imprisonment for debt does not exist, though the Courts have power to arrest a defendant who is proved to be withdrawing property from the jurisdiction of the Court to evade a just payment.

Nor can I learn of any country which having once abolished imprisonment for debt has ever sought to restore the system.

We can only defend our singularity by proving that the system is to the advantage of the com-

munity; and the two arguments put forward are that it is good for trade and that it enables the working classes to obtain food and clothing when they are out of work or go on strike. We must remember that these arguments were used before there was any unemployment pay, and the advocates for running strikes on credit have never been regarded with any great favour by the commercial classes.

The only argument that has ever affected my mind in the least has been the prophecy that if imprisonment for debt were abolished the working man would be unable to get credit in times of distress. Personally I do not believe it. Experience and history are against it.

On every occasion when any legislative step has been taken to mitigate imprisonment, the prophecy has always been that trade will suffer and individuals will starve for want of credit. On every occasion the facts have obstinately refused to honour the prophecy after the event. I am inclined to back history against prophecy in this matter. Credit will be given to a working man of good character to a reasonable amount, but he will not be tempted, as he is to-day, to mortgage his future wages on the security of his body for every passing whim. Beer is a cash business, betting is a cash business, greyhound and other racing is a cash business, picture palaces, railway trains, tram cars, slot machines, are all run on a cash basis, yet no one will pretend that the working man does not get as much as he wants of the goods and services of all of them.

To-day the temptation, and very largely, I am

sorry to say, the practice, is for a workman to make the brewer and the betting man first mortgagees of his weekly wages, whilst the draper and the grocer are too often very ordinary shareholders indeed, obtaining an irregular dividend ranking after the Treasury fees of the County Court. Can anyone honestly say that it would not be better for the draper and the grocer to have their working-class business put on a cash basis? Abolish imprisonment for debt and the grocer and draper will demand cash in advance or, at the worst, weekly bills. The workman will then be face to face with the immediate question of whether he prefers to spend his wages in drink and pleasure for himself or food and clothes for his wife and children. I have no doubt what his answer will be. The working man is of the same nature as ourselves. In the old days of general imprisonment for debt everyone lived in debt. The middle classes were tempted to live beyond their means and did so, and the Micawbers and Skimpoles of the world were always being carried off to prison, leaving their families in tears. Now such a state of things is unknown. Through the great private and public stores the middle classes buy for cash the best material at the cheapest prices and live within their incomes. The result in their lives is matter of social history. Why is it to be supposed that any different result will be arrived at when the working classes are no longer tempted by a false system of credit?

"The motive of credit," says Dr. Johnson, "is the hope of advantage. Commerce can never be at a stop whilst one man wants what another can

supply; and credit will never be denied whilst it is likely to be repaid with profit. He that trusts one whom he designs to sue is criminal by the act of trust: the cessation of such invidious traffic is to be desired and no reason can be given why a change of the law should impair any other. We see nation trade with nation where no payment can be compelled. Mutual convenience produces mutual confidence and the merchants continue to satisfy the demands of each other though they have nothing to dread but the loss of trade."

This argument was against imprisonment for debt as the worthy Doctor saw it in his own time, but it is just as convincing to-day about our own or any other form of imprisonment for debt. It goes to the root of the matter.

Further, we have already proved in our own country the beneficial effects of the partial abolition of imprisonment for debt, and other countries have set us the good example of doing away with it altogether. The fact is that whilst we are endeavouring to raise the standard of living and provide by insurance for conditions of unemployment, we tolerate a system which leads the weak and improvident into temptation. Viewed in the light of facts the system of imprisonment on account of small debts is a system for the propagation of small debtors.

It is because I believe that the abolition of imprisonment for debt will improve the character of our citizens, as it improved the character of the Athenian citizens more than two thousand years ago, that I have put in so many hours overtime in advocating its abolition. But whilst I

would abolish imprisonment and should like to see the English workman paying his way like his French or German brother, and though I am eager to see the poorer classes freed from the misery that debt and extravagance brings upon them to-day, yet no one, I hope, recognises more clearly than I the sacred duty of a debtor to pay an honest debt. Every penny that he can save after his first duties of maintenance of wife and family should be devoted towards the repayment of debts.

But this is a personal obligation on a man, like speaking the truth, or treating mankind with courtesy, and, in a word, is only a branch of the golden rule of doing to others as you would be done by. The breach of this obligation ought not, as it seems to me, to be treated nowadays as more than a case of a flagrant breach of good manners, and I would rather imprison a man who forgets to shut a railway carriage door when he gets out on a winter night than a man who omits to pay me the five shillings he borrowed yesterday. Both are ill-mannered fellows and must be dealt with socially, but not, I think, by imprisonment. Debt, except from misfortune, is really "worse form" than drunkenness. When this is generally understood no Debtors' Act will be necessary.

And the right feeling of a respectable debtor towards his creditor seems to me stated in very apt and beautiful words by old Jeremy Taylor in one of his "Prayers relating to Justice," in which he sets out the correct petition to be made thus: "And next enable me to pay my duty to all my friends, and my debts to all my creditors, that

none be made miserable or lessened in his estate by his kindness to me, or traffic with me. Forgive me all those sins and irregular actions by which I entered into debt further than my necessity required, or by which such necessity was brought upon me; but let them not suffer by occasion of my sin."

This is certainly the Gospel message to debtors which is binding upon all of us, but it does not invalidate the creditor's petition: "And forgive us our debts as we have also forgiven our debtors."

CHAPTER VI

THE WORKMEN'S COMPENSATION ACT

The broad proposition, of course, was that the Legislature intended that there should be compensation given to every workman in certain trades, when an injury happened to him in the course of his employment.

LORD HALSBURY.

I entirely agree with what has been said by my noble and learned friend on the Woolsack that you ought to construe this Act so as, as far as possible, to give effect to the primary provisions of it.

LORD DAVEY.

Lysons v. *Andrew Knowles*, (1901) L.R., Appeal Cases, p. 79.

PART I

IN PARLIAMENT

IF there is one portion of my work in the County Court that I look back upon with reasonable satisfaction it is the share I took in the administration of the Workmen's Compensation Act. The first Act was passed in 1897. From a parliamentary point of view it was an Act based on Gospel principles. And it might fairly have been called the Good Samaritan's Act but for the unfortunate fact that there was no oil and wine, and the two pence were handed over to the priest and Levite to administer.

The moving spirit at the back of this great reform was Mr. Joseph Chamberlain. The idea that was to be put into statutory language was this: "When a person, on his own responsibility and for his own profit, sets in motion agencies which create risks for others he ought to be civilly

responsible for the consequences of his own acts."

Those were Mr. Asquith's words and they expressed scientifically the legal and moral basis of the Bill before Parliament. Mr. Chamberlain described the new measure as an "enormous boon" to working men. The effect it was intended to produce and the parliamentary promise he made to the people, may be summed up from his speech in a few words. We have to-day, he says, something like 12 per cent of accidents already provided for, and we are going to provide for the other 88 per cent. We are going to provide not only for those who are injured by no fault of their own, but also those who, in the technical language of the law, have contributed to the accident from which they suffer.

The parliamentary ideal was a simple one. An injured man in certain trades had only to ask compensation and to receive it according to a fixed scheme. State-paid doctors were to be at the disposal of the parties and an arbitrator was to settle the amount of compensation. Nothing else could be in dispute. The employer was left to insure against the risk and debit the premium to the cost of production.

Moreover, the Bill before Parliament was discussed in a spirit of businesslike charity. The Government were sincere and earnest in pressing their reform but showed readiness to meet reasonable objections to the details of their scheme. The Opposition exhibited a real desire to improve without destroying.

Unfortunately, the intention of Mr. Chamberlain and the proposal of Sir Matthew White

Ridley who had charge of the Bill, that there should be an automatic scheme of workmen's insurance or compensation to be carried out without the assistance of lawyers and law courts was not passed into law. The simple and inexpensive procedure they desired was not palatable to the lawyers in the House. The notion that any Act of Parliament could be construed and made use of without legal aid was too revolutionary, and so, if any disputes arose, lawyers were given charge of them, if the parties so desired, and they were entitled to ask for the services of the County Court Judge as an arbitrator. Any man in the street could be chosen to arbitrate but he would probably have asked for a fee. The County Court Judge got nothing for his work as arbitrator, and as his Court provided a scale of fees which remunerated lawyers, they naturally brought their clients to a court, rather than choose some outside arbitrator who could not have taxed their costs.

I make no grumble and never did about the voluntary work I was called upon to do. I enjoyed it. But it is interesting that a great scheme like the Workmen's Compensation Act, which costs industry a premium income of £8,000,000 a year, should be administered by unpaid arbitrators who are admittedly already inadequately remunerated for their regular judicial duties.

And this handing over of the administration of the Act to judges and lawyers, as Mr. Chamberlain had foreseen, destroyed its automatic working and wrecked the certainty of its intention. For though what Parliament intended was clear

enough, what the Act said was another story.

One of the gravest impediments to business, and insults to common sense in the conduct of legal affairs, is that it is a sacred principle of our Courts that they should never try to find out what Parliament intended, but should merely construe what it said. It is as though a man took an urgent written message to a doctor asking him to come at once to the station, and the doctor, instead of asking the messenger whether the writer intended him to go to the police, the railway, or the fire-station, went driving round to each of them to discover which was meant.

And though the Act was well intended it was hopelessly drafted. As Serjeant Arabin might justly have said if he had had to open an argument upon one of its sections: "This Act bristles with pitfalls as an egg is full of meat." It has been judicially described as "unskilful legislation", "the fruitful parent of much painful litigation", and the Act might be fairly characterised in the language of Mr. Kipling, as "a devil an' a ostrich an' a orphan child in one." This was a most unfortunate affair, since it tempted judges who disliked the principle and intention of the Act, to make mountains of demurrer out of its simple pleas for business and common sense. This has, I fear, resulted badly for the reputation of our Courts.

In the future of social life in this country there is bound to arise a serious contest between the bureaucracy and the judiciary. Indeed, it may already be said to have arisen and I propose to deal with this matter at a later stage. Humanity

is only interested in the quarrels of the judiciary and the bureaucracy as a householder is interested in the quarrels of the butler and the housekeeper. Whichever serves humanity best should clearly be given the greatest power to serve the master of the household. Humanity likes the publicity and honesty of the law, but naturally dislikes its costs, delays, and quibbles. Humanity likes bureaucracy when it works courteously, efficiently and promptly, but it intensely dislikes its secrecy, pedantry and rapacity.

The Workmen's Compensation Act was a wholly new idea to the judicial mind and it was not the more welcome in that it bore the mark of having been "made in Germany." This great country was not the "spiritual home" of all our judges. Not only was it a foreign notion that was introduced, but it was imported for the express purpose of abolishing a beautiful, home-made, cream-laid, copper-bottomed legal fiction of judge-made law that our Courts were intensely proud of. The consciences of old-fashioned judges who knew the law of contract and the law of wrong, and knew there was no other law, were outraged by being asked to decide that a man was liable to pay compensation who had done no wrong and had not contracted to make the payment. The judicial stomach could not assimilate this foreign article of diet, and incoherence of judgment followed the consequent dyspepsia.

For where Parliament had failed to follow Gospel principles was in putting the new wine of co-operation and insurance into the old leather bottles of litigation, which though useful carriers

of the heavy potations of our fathers, are of little service for the lighter beverages of a new generation. And the old-fashioned lawyers, as we shall see, sought to destroy the Act, whilst the younger generation, and judges in the House of Lords, whose minds had a wider vision, endeavoured to carry it out in the catholic spirit in which it had been brought forward and enacted. It was a contest between letter and spirit, a judicial struggle between the modern desire of peace and fair dealing and the ancient doctrine of the pound of flesh.

It may seem to some only a study in pedantry to trace the blunders and catalogue the wreckage along the trail of misleading cases in the Courts. The mistakes of the Court of Appeal have been, you will say, set right by the House of Lords and who wants to read an essay on The Social Inconvenience of Legal Error? There I disagree. Not only is legal error, where it is founded on antipathy to social necessity, a bad thing in itself, but if it recurs whenever a Parliament unites to pass laws for the amelioration of injustice or hardship, it will naturally be countered by Parliament handing over its administration to the bureaucracy. Now I am by no means convinced that this is going to benefit the poor man whose case I am chiefly considering. I must, therefore, invite you to explore the groves of legal history and learn why wise and eminent judges shook their heads and wagged their beards over the Workmen's Compensation Act.

And let me tell you that although they are wanting in any direct modern sex appeal you

will find much romance and many stirring deeds of heroism in the volumes of old law reports. Smith's *Leading Cases* are full of merry tales of human frustration. There was the dour Coggs who let in his friend Bernard over the brandy cask, there was the astute Scott who never paid Manby, the draper, for his wife's dresses, there was Wigglesworth who built himself an everlasting name in the Hibaldstow trespass case, and the hero of our own time, Dickson, who actually bested a railway-company in the matter of Dutch Oven, the tail-less hound—these and many others are names enshrined in our dusty tomes of law, but if you would read them with delight, has not Sir Frederick Pollock done our leading cases into the most melodious verse?

If I were a bencher I would like to promote a pageant of these grand old litigants in honour of their services to the English law. I think my favourite among them all is little Priestley, the butcher's boy. You will find his simple story in the third volume of *Meeson and Welsby*. How many know that it was at the Lincoln Summer Assize of 1836 that the brave butcher's boy began it, and started a train of legal thought reaching out to the workmen's compensation system of to-day?

It was Priestley's duty to deliver meat, and one day Fowler, his master, sent him out with such an overload of beef and mutton that the cart broke down and poor Priestley broke his thigh. Priestley brought an action against his master, and the jury gave him a verdict for one hundred pounds, but on appeal the judges would not have

it, and so poor Priestley never got it. A servant, they said, is not bound to risk his safety in the service of his master; he may decline any service where he apprehends injury to himself.

Abinger, then Lord Chief Baron and a dry, unsympathetic Whig lawyer, who presided in the Appeal Court, when Priestley's case was argued, admitted that there were no precedents either for or against such an action, but he was hard put to it to explain in legal terms why the little butcher's boy, who was certainly a brave explorer into legal hinterlands, was not to be allowed to peg out the claim the jury had awarded him. His Lordship was driven back to "general principles."

Having no cases to guide him, Abinger played a lone hand, and naturally played it from the point of view of the man who held the cards. If, he said, the master be liable to the servant in an action of this kind, the principle of the liability would carry us to an alarming extent. For instance, if a master put a servant into a damp bed or a crazy bedstead or gave him bad meat to eat he might be liable in damages to his servant. "The inconvenience, not to say the absurdity, of these consequences," afforded a sufficient argument against poor Priestley and all other servants in like case. Priestley broke his leg and lost his case, and legal history does not record his future career. But though Lord Abinger was against the poor boy, he might fairly have said, in the phrase of a celebrated and eloquent Manchester surgeon, that, "This day he had lighted a candle which would bring forth good fruit."

Several minor heroes made legal efforts to get

behind this judgment, but the judges were too many for them. It was strongly endeavoured to make masters liable to their servants for injury caused by the negligence of a fellow-servant, but the judges declared that, when a servant enters a service he contemplates all the ordinary risks of his work, including the negligence of his fellow-servants, and that allowance is made for this by the master in fixing his wages. This "doctrine of common employment," as it was called, was, of course, largely a figment of judicial imagination, and it set back, or rather kept back, the hour of industrial reform for more than one generation.

There never really was a law of that kind. It is what is rightly called judge-made law. The judges said that it was "inconvenient" and "absurd" for masters to be responsible for negligence of their servants. So, of course, it was—to the masters—and in 1836 that finished the matter. Thus it came about that in a railway accident, if it was caused, let us say through the negligence of the company's signalman, every ordinary passenger got compensation out of the company, but the engine-driver, the stoker, the guard, and their widows and orphans got nothing. Note, however, that if the signalman had belonged to another company it would have been quite otherwise.

In prehistoric days when Druids sat under oak trees I daresay judge-made law was all very well, though no doubt the personal prejudices of the Druids were manifest in their decisions. But since the days of the Ten Commandments it has been recognised that statute law, carefully considered and simply expressed and written down

on tables of stone or otherwise, is or ought to be a better-class article for ordering the affairs of a modern community.

No doubt the judges of 1836, being men connected with the upper middle classes of the day, could not conceive how civilisation and social order could exist side by side with a wicked system whereby a master had to compensate a workman injured in his service. The thing was as incomprehensible to the judicial mind of that date as the fifth proposition of Euclid is to many a third-form schoolboy to-day. Some of our judges are still in the third form in their ideas of sociology. That is one of the dangers of judge-made law. It is bound to put the stamp of old-fashioned class prejudice on its judgments. If the judges had been Labour leaders they would have discovered an implied contract for the master to pay compensation with equal complacency.

The fact is that *natural justice* is merely justice according to the length of the judge's foot, as the common saying is. And the length of a judicial foot will depend on the evolution of the judge. That is to say, according as he and his ancestors have rested their feet cramped in pinched shoes under the mahogany of the wealthy, or tramped barefoot along the highway in the freedom of poverty, so will a judge's principles of natural justice favour the rich or the poor.

We cannot get away from the fact that our judges make a great deal of law. The idea that a law is somewhere in existence and that the judges merely adopt it will not, I think, hold good for a moment. It is, indeed, a legal fiction. As

a great American jurist, Professor John Chipman Gray, of Harvard, asks: "What was the law in the time of Richard Cœur de Lion on the liability of a telegraph company to the persons to whom a message was sent?" The answer to this question is obvious.

When one reads from time to time of decisions of the Courts that are upheld for a generation and finally overruled, it is against the truth to speak of a pre-existing code of laws which the judges merely administer and expound. And the reason that this is not openly acknowledged and that this mysterious bogey of pre-existent law is worshipped in our Courts of Justice is, as Professor Gray tells us, that there is an "unwillingness to recognise the fact that the Courts, with the consent of the State, have been constantly in the practice of applying in the decision of controversies, rules which were not in existence and were therefore not knowable by the parties when the causes of controversy occurred. It is the unwillingness to face the certain fact that Courts are constantly making *ex post facto* law." This is why we maintain the fiction of the continuous pre-existence of law.

The fear among those in authority seems to be that it would be unwise openly to recognise the real extent of the judicial power, as it would be unpopular and widely rebelled against, and that under the soothing fiction of the existence of an imaginary body of law and by the constant humble assertion of the judges, that they are not there to make laws, but only to administer them, the man in the street is deceived for his own good.

For myself I have grave doubts whether this juggling with facts is to anybody's benefit.

But I think I shall be able to satisfy the candid reader who cares to spend a few moments over this short history of the Workmen's Compensation Act that judges do make law and in making law often repeal enacted statutes. When we understand and confess that our judges are lawmakers then we shall have to impress upon them that, when they are dealing with social matters, the new law they make should be founded, as I put it, on Gospel principles, or at least upon the aspirations of modern thought rather than on the musty traditions of the law courts.

Consider for a moment how the social life of working-men was affected during many generations by the legal commands of their fellow citizen, James Scarlett, the Whig lawyer, who decided Priestley's case. For the law he enacted to meet the case of the butcher and his boy became the law for every servant of all time. No doubt benevolent individual employers often assisted their men when they were injured, but this new law was promulgated at a time when the individual master was beginning to disappear, and instead of human masters and servants you had now impersonal boards and committees of limited liability companies and a huge industrial army working under agents and officials. The law enacted was that every railway servant, every miner, every mechanic, every labourer working for his own and his employer's livelihood had to hazard life and limb in his daily work at his own risk and expense.

From 1836 to 1880 men were killed and injured by thousands in industrial work, and there were no pensions for the widows and orphans, no compensation for the wounded. Moreover, such a system discouraged employers from spending money on safety devices. No doubt many good and wise employers did a great deal to safeguard their men; equally no doubt, servants, being but human, were often injured and killed by their own carelessness and recklessness. The deplorable part of it was that the law had taken up an attitude against the poor in this matter and, as things stood, it was to no company's interest to spend their money and decrease their dividends by safeguarding the lives and limbs of their servants.

It was this state of things that the Workmen's Compensation Act was intended to abolish, and it was intended to replace it by a scheme under which an employer should insure his workmen against accident, putting the premium, of course, upon the cost of production, and when an accident happened it was intended that the insurance companies would pay compensation automatically unless some dispute required lay arbitration.

An accident was no longer a matter of financial interest to an employer who had insured and paid his premium. When it happened, he very naturally gave notice to his insurance company and left the matter in their hands to be dealt with. The companies were not, of course, there to dispense charity. Having got the premiums, they not unnaturally sought to keep as much of them as was possible. In the defence of this sound com-

mercial practice the companies found a splendid ally in the Court of Appeal.

It is not to be doubted that every individual judge in the Court of Appeal endeavoured to the best of his ability to interpret the Act well and truly. There is equally no doubt that the spirit of many of the interpretations placed upon the draftsman's words did not give effect to the business intention of Parliament.

Part II

IN THE LAW COURTS

I THINK the real misfortune of sending Workmen's Compensation Act appeals to the Court of Appeal was that they went to a tribunal, the members of which had had no personal experience of any similar proceedings whilst they were at the Bar, and whose business in life had not brought them into very direct touch with the working classes. Human nature being what it is, and judges being human, some judges would rejoice to assist in working a scheme for the benefit of sufferers, whilst others would see in the policy of the statute an undermining of social values and a burden on industry very dangerous to the community.

The two Lords Justices who took most part in the early decisions of Compensation Act Appeals were A. L. Smith and Henn Collins. A. L. was one of the best of men, beloved by rich and poor. An athlete and sportsman and a good practical lawyer, he had no knowledge of or sympathy with

new social ideals. His world was one in which a good-natured jovial aristocracy naturally conferred kindnesses upon a well-mannered democracy who received them in a grateful spirit. He was a real good fellow, but this new-fangled insurance scheme was the thin end of a wedge that was to split the world in twain and ruin the country, and outside the Court he would tell you so.

Henn Collins was a great lawyer and a man for whom the profession had a sincere regard. But his attitude towards the Workmen's Compensation Act was one of hostility. His judgments were, to my mind, destructive of the principle of the Act. But I am content to accept J. B. Atlay's description of our friend's work when he says: "In the Court of Appeal his judgments were marked by breadth of view and by a courageous logic which never shrank from its legitimate conclusions and he showed no inclination to enlarge the construction of statutes of which he disapproved, such as the Workmen's Compensation Act 1897."

Let us leave it at that. I had the honour to know both these great judges personally and held them in high esteem, but in matters of social and legal reform we held entirely different opinions. I often thought that if A. L. Smith had ever actually sat as an arbitrator in a County Court, his kindly good-nature would have converted him to my side; but the lucid legal mind of Henn Collins would never have allowed its master to refrain from the luxury of subtle interpretation.

From the first it became clear that whilst the tendency of arbitrators was to include workmen within the Act wherever possible, the Court of

Appeal seemed intent upon excluding them. It fastened upon the words "arising out of and in the course of his employment." It was clear from the debates in Parliament that these unhappy words were supposed to be a legal and periphrastic way of saying "during the employment" or "whilst in the service of." It was because that was their intended meaning that the words "serious and wilful misconduct" were put in to the Act to show that an accident caused merely by a man's own folly or negligence was within the terms of his insurance unless it amounted to real misconduct.

Two early cases soon destroyed the simplicity of the scheme of the Act. In the first case a boy was employed in a pottery. His duty was to make balls of clay and hand them to a woman working at a machine and he was forbidden to interfere in any way with the machinery. Being a boy he naturally thought he would like to clean the machine when the woman was absent and he got injured. In a second case a ticket collector got from the footboard of a train after it had started, not for any object of his employment but for his own purposes.

In neither of these cases was the sufferer charged with wilful and serious misconduct. He was really guilty of what the law calls "contributory negligence," but this Mr. Chamberlain and Parliament had specifically pointed out did not hinder a worker from getting his insurance money.

We owe to Lord Justice Collins' "courageous logic" the wasteful conflicts that have followed

in discussions about whether this or the other accident "arises out of" a man's employment. Later Courts of Appeal started new mechanical hares for arbitrators of sporting tendencies to chase round the legal arena. There was the "scope of employment"; the "special risk" and other judge-made dummies. In a sense, of course, no accident arises out of a man's employment; an employer does not employ a man to have an accident and some of the decisions that are reported seem based on this view of the matter.

It is good, too, to remember that even the Court of Appeal that had started these heresies shrank from pressing their decisions to a legal conclusion. A collier in breach of rules was riding on a truck. The horse took fright and bolted. The collier jumped off the truck and tried to stop the horse but was run over and killed. It was again decided that the man was not guilty of serious and wilful misconduct.

It was clear the case was exactly in the same position as the former cases cited. No courage of logic could distinguish them. It was left to the rough and ready humanity of A. L. Smith to pull his colleagues out of the pit they had dug for themselves, and return to the principles of the Act. No one could say that the man was employed to stop runaway horses any more than he was employed to ride on trucks. But he had done a courageous act. It clashed with A. L.'s idea of "cricket" that his widow should not draw the insurance money. The deceased, he said, "was acting in the interests of his master in an emergency which suddenly arose and in which anyone would,

I should think, have done the same thing. I think therefore that the accident arose out of his employment." Not much logic about this perhaps, but at least humanity and good sense. So here we have "emergency" as a new judge-made exception to the judge-made law, and the total result is more glory of uncertainty for lawyers to prate about.

There seems no reason to doubt that if the Court of Appeal had been the final Court to which workmen could have applied, the insurance scheme enacted by Parliament would have soon been a total wreck and a new Act would have been called for without delay. But these early decisions naturally gave great uneasiness to the authors of the scheme, and the victims who lost their benefits under it determined, with the assistance of the trade unions, to carry their cases to the House of Lords.

A case came before me at Salford in which a point was raised by a colliery solicitor. In those days the Act said that no one was to be paid for any accident unless he was incapacitated for more than two weeks. The point taken was that if he was injured or killed during the first two weeks of his employment he was out of benefit. My good friend, Mr. Fullager, who argued the case did not seem very proud of his point. I could see nothing in it. The man in question had worked from Tuesday to Thursday and was injured by a fall of coal. He had earned only 12/- in two days so I could only give him half-wages, 6/-, commencing fourteen days after the accident.

A. L. Smith and Henn Collins upset my deci-

sion and the matter was taken to the House of Lords by the man's union. The original order was restored, but the case was memorable because Lord Halsbury laid down the true principle on which the Act was to be administered. "The broad proposition, of course, was that the Legislature intended that there should be compensation given to every workman in certain trades when an injury happened to him in the course of his employment." This, of course, was in direct opposition to the views of A. L. Smith and Henn Collins. Lord Lindley said the result arrived at by the Court of Appeal was "startling and untenable" and Lord Davey and others concurred. It was good to know that the House of Lords was taking a stand for the parliamentary intention of the Act and upholding arbitrators who interpreted it so as to give effect to the primary provisions of it.

About this time the Court of Appeal had another rebuff. They laid down a new law that unless a man began legal proceedings within six months of the date of the accident he could not recover. In this and other cases A. L. Smith used to speak of the hardship of the law to the master. He used to say that the Act conferred enormous benefits on the employees at the expense of their master, and he rejoiced over the clause which he decided barred proceedings after six months as "the only provision in the Act clearly in favour of the master." It is curious how so learned a man failed to grasp the idea of this insurance scheme. The master had really little interest in the matter. Having paid his premium to the insurance company his interest and the workers' interest was

the same, namely, that the insurance company should settle the case with the injured man promptly, fairly and without litigation. The expense of it all was part of the cost of production.

The invention of this six months' limitation would have meant that every injured workman would have had to start litigation directly he was injured. The House of Lords made short work of the idea and Lord Halsbury shocked old-fashioned lawyers by telling them that the language of the statute "contemplated what would be a horror to the mind of a lawyer, namely, that there should not be any lawyers employed at all, and that the man who was injured should be able to go to his master himself and say 'I claim so much' and that he should go to the County Court Judge and say, 'Now please to hear this case because my employer will not give me what I claimed.'" I need hardly say that I rejoiced greatly to hear such splendid commonsense uttered from the Woolsack.

Moreover, when Lord Halsbury dealt with his brother A. L. Smith's suggestion that the Act was made for the benefit of the man, or the employer, he exposed the falsity of the idea with some warmth.

"My Lords," he said, "I absolutely repudiate any obligation to look at these things at all in that spirit. We are not here considering what is inserted in a contract for the benefit of one party to it or the other, so that that party may get a benefit out of it; we are here considering an Act of Parliament which itself describes what is to be done."

This was hot gospelling indeed, but it was a sound rebuke to the vagaries of the Court of Appeal. "So and no otherwise!" was the Lord Chancellor's answer to those who would whittle away the meaning of the workmen's Magna Charta, and had the Court of Appeal accepted his commands a great deal of human misery would have been saved.

But they did not, and arbitrators were put in a very unpleasing position. Parliament said to the arbitrator: Here is a scheme of compensation, administer it by making it apply as Parliament intended. This was a fairly simple task. But when the Court of Appeal decided it was not to be administered as Parliament intended, then classes of workmen were shut out until some union carried the matter to the House of Lords. Meanwhile an arbitrator was expected to do injustice. He could not obey Parliament and the Court of Appeal, because they said opposite things. He was not acting as a judge but merely as a lay arbitrator. To which authority did he owe suit and service?

I will refer to but one or two further instances of the way in which the plain intention of the Act was flouted. Parliament had not defined an "accident" but left it to common sense to say whether an "accident" had happened. The Court of Appeal set to work to do it and decided that the word involved something "fortuitous and unexpected." So when a man was ruptured by a strain in endeavouring to move a heavy weight, a very common "accident," this was not an accident unless a slip or fall took place at the same

time. For several years this bad judge-made law was the cause of wasteful litigation and deprivation of benefits, but the House of Lords swept it away unanimously and the word "accident" was once again restored, as Lord Shand said, to its "popular and ordinary sense."

Lord Justice Henn Collins thought in such cases that "the element of accident was entirely wanting." All the Law Lords thought that such cases were obviously accidents. What was the poor lay arbitrator to think about it? He was like a motorist at Oxford Circus with one traffic policeman waving him on and the other holding up his arm to stop him.

But the Court of Appeal pursued their policy of amending the Act to their liking with continuous energy worthy of a better cause. A curious idea occurred to someone that if the accident was a "street risk," that is, an accident which might have occurred to any man in the street, it could not be an accident arising out of a man's employment. A man about his master's business falling from a cycle or slipping on orange peel or knocked down at a level crossing was out of benefit. This doctrine of "street risks" shut out hundreds of claims and aroused a lot of litigation. In Elliott's Workmen's Compensation Act you will find a list of more than a dozen cases that actually reached the Court of Appeal and are now over-ruled. But how many had to be wrongly decided by arbitrators and how many were never brought forward at all?

When the matter got to the House of Lords it was made clear that this judge-made notion of

"street risks" was not in the statute. As Lord Parmoor said, "the fact that the risk may be common to all mankind does not disentitle the workman to compensation if in the particular case it arises out of the employment."

But the most disastrous interference with the statute was the result of a series of decisions allowing the weakest and most unprotected workmen to contract out of the Act. A man who was disabled permanently and in receipt of weekly compensation had never been allowed to settle for a lump sum unless the Registrar or Judge of the Court was convinced that it was for his benefit. In doing so he was contracting out of the Act. His compensation could only be redeemed by the very substantial sums ordered by the Act or something less than these authorised as fair and reasonable by the Judge.

In 1912 the legal world was startled by a decision that an insurance company and an injured workman might agree a lump sum for compensation and the Court was bound to record it without inquiry.

This was decided in the case of *Ryan v. Hartley,* which was a most extraordinary effort at judge-made law, because it destroyed a principle of the Act laid down in Section 3 (1) that the Act "was to apply notwithstanding any contract to the contrary made after the commencement of this Act." This principle of "no contracting out" was the Parliamentary basis of the Act. It was there in words and it had been acknowledged and acted upon from 1897 to 1912.

The Court of Appeal ignored it and decided

that there was nothing in the Act to prevent an adult workman coming to an arrangement by way of compromise with his employer's insurance company to accept a lump sum and relinquish his right under the Act.

The evil of upsetting the proper statutory practice was that an uneducated man for the sake of a small sum down would sell his rights to continued compensation and when that came to an end would go on the rates. This was a boon to the insurance companies, though it is only fair to say that representatives of the better companies often voluntarily consulted the Court about the reasonableness of the settlement. On one or two occasions where the Registrar considered the settlement utterly unfair, I ordered him not to record on the ground that no Court ought to lend its machinery to assist fraud. We were once threatened with a mandamus in one of these cases, but unhappily nothing came of it. It would have been interesting to have argued before the King's Bench Judges that where Parliament ordered you to do one thing and the Court of Appeal suggested you ought to do the reverse Parliament was entitled to a first charge on your obedience.

In one case in which, in my view, an ignorant illiterate man had been persuaded by a claims agent to sell his birthright under the Act for less than its value, I took occasion to decide that as the man could not contract out of the Act, I had power to award him a weekly sum. This was waved aside, as although the Court had decided the point without consulting the section of the Act, they were not going to look at it now upon

the non-pertinent suggestion of a lay arbitrator.

Several similar decisions followed. Improvident injured workmen gave up their rights and insurance companies increased their profits. But wiser men than myself were troubled about the matter and in 1917 when Lord Justice Atkin, who was a newcomer to the Court of Appeal, was introduced to the decisions allowing contracting out, he went as far as "to forbear from expressing any opinions" about them, a phrase in high legal circles practically equivalent to the theatrical manager's "Silence may be regarded as a polite negative."

Two years later when Lord Sterndale became Master of the Rolls in succession to Sir H. H. Cozens Hardy who had presided when the original blunder had been made in *Ryan v. Hartley*, another effort was made to persuade the Court to hear an argument about "contracting out." It had become clear to most men's minds by now that the Act forbade it, the Court of Appeal permitted it, and in doing so had never considered the clause by which it was forbidden. Counsel put this matter forward.

Lord Sterndale had been no party to the earlier decisions but he would not allow them to be attacked and in his judgment used these memorable words: "Arguments have been addressed to us to show that these decisions are wrong. They may be; I do not know; but these arguments should be addressed to the House of Lords because these decisions being decisions of this Court we are bound by them."

This seems strange doctrine. A Court decides

without hearing any argument that a contract is good. A counsel comes for other parties with a similar case and says: "Look here, when you decided that former case, no one reminded you, and you did not happen to have it in your memory, that there was an Act of Parliament expressly forbidding such contracts as these. I will read you the Act; you will see that it applies. I ask you to apply it to my client's case."

To which the Court answers: "You may be right and we may be wrong but having been wrong once that is an accident arising out of and in the course of our employment which prevents us for ever from deciding according to the words and intention of the Act of Parliament."

This is, as the theologians would say, inconvenient. It is a doctrine of infallible fallibility. It is a legal problem that seems to require further consideration. Is the Court of Appeal, having made a mistake in law, the error having arisen from the omission to read a relevant section of an Act of Parliament, bound to continue and perpetuate its error when the matter is pointed out to them? If so we require a short statute for The Abolition of Continuous Perpetuation of Legal Error.

I was so interested in this problem that when I was invited to preside over a Moot at Gray's Inn I set the following imaginary case for argument and elucidation.

"A, a man of thirty-five, employed by B, is seriously injured by an accident arising out of and in the course of his employment.

"B notifies this to his Insurance Company and

asks them to deal with it, and they pay A £1 a week for six months. The Company's clerk then calls on A, who is ill in bed. A has a wife and six children, and is penniless. The clerk offers him £30 in notes to settle the matter. A accepts the money and signs an agreement in full settlement of all claims against B.

"The Company send the agreement to the County Court for registration under the Workmen's Compensation Act. The Registrar enquires into the matter under Rule 51, and reports to the Judge that the agreement was not entered into under mistake, or obtained by fraud, or other improper means; that the man is totally and permanently incapacitated; that he would be entitled under the Act to £1 a week which B could only redeem for a sum of £624. The Judge directs that the agreement should not be recorded without further inquiry, and fixes a date for the inquiry.

"A now files an application for an award claiming against B £1 a week under the Act.

"The Judge refuses to record the agreement on the grounds (a) that it is not an agreement under Schedule 2, 9; (b) that it is an agreement contracting out of the Act (see Section 3); (c) that the amount is inadequate.

"As Arbitrator under the Act the Judge finds that A is totally incapacitated, and awards A £1 a week during incapacity.

"B appeals against both these decisions.

See *Ryan v. Hartley* (1912), L.R. 2 K.B., 150: *Rawlins v. Hodgson,* 87 Law Journal, K.B., 761, etc."

The matter was very ably argued and the only question to be considered was whether the Moot should decide what the law was or what the recent decisions had decided the law to be. I was, of course, prepared to follow the erroneous decisions of the Court of Appeal to the effect that a man might contract out of the Act, but it was pointed out to me that a Moot constitutionally decides what the law is in spite of any decisions to the contrary. It therefore became my unhappy duty to over-rule the Court of Appeal in our mimic House of Lords. I am pleased to remember that C. A. Russell, who sat with me, concurred in my judgment.

This was in November 1921, and two years later the matter came to the House of Lords and, as one of my young advocates wrote with glee, my decision was "upheld." I pointed out that the right word was "followed," but I doubt if the House of Lords had the wisdom of the Moot quoted to them. However, the protection of the Act was restored to workmen, and once again they were delivered out of the temptation of improvidently selling their rights under the scheme. All the long series of cases in the Court of Appeal were over-ruled and all such agreements contracting out of the Act were held to be void.

The history and results of these legal gladiatorial contests by no means shows that lawyers as a class were arrayed against parliamentary schemes of social betterment. Speaking generally, the Judges of the County Courts and the House of Lords were of one mind about the principles of administration, and in many ways injured

workmen and their dependants have probably got a better measure of justice than they would have done under a scheme administered by a department. Nevertheless, the activities of judges, as makers of law, require study and consideration in any schemes of legal reform, and the suggestion I put forward is that when judges are making law they should base their decision on Gospel principles. If Lord Abinger had taken that course in Priestley's case, and remembered the precedent of the Good Samaritan, instead of inventing a selfish, narrow class precedent of his own, what a world of trouble and misery he would have saved.

Part III

IN THE FUTURE

We cannot greatly blame Lord Abinger for not seeing in 1836, what the world is beginning to see to-day, that the only sound principle of dealing with accidents to the soldiers of industry and the widows and orphans of those that are killed at their work is the Good Samaritan principle.

The real matter of interest in the future is, how is that principle to be best administered? There are many who think the whole business should be taken away from the Law Courts altogether. The cost of some of the cases has been appalling. £600 was mentioned as the costs of the Miners' Union in upholding Lysons' decree for 6/- a week. Moreover, many people said, not without truth, that some judges set their faces against the Act. It is a bad thing when people get it into their

heads that judges are against the principles of legislation.

There was great excuse for the judicial mind rejecting the Act. In the first place it was badly drafted. Bureaucracy seems to delight in luring judges to indiscretion by throwing complicated, illogical and ill-drafted statutes on to their desks. It is always a great temptation to a judge to give him a statute to pull to pieces. It rouses the anthropoid in him. Then, most unfortunately, the judges who heard the appeals had never walked the hospitals and seen the out-patients for whom they were now to prescribe. A week in Manchester County Court would have altered all their theories. But, to be quite candid, the Workmen's Compensation Act was a scheme which the judges considered unscientific. It was repugnant to them and they were biased against it.

This came out in many curious ways. Lord Sumner, in writing of Lord Parker in the House of Lords, confirms a story that was told at the time it occurred. "On one occasion it so chanced, in a case which concerned the interests of workmen that the House was divided as four to three, the four being of one political party and the three of the other. Parker was one of the minority and felt that this result did not look well. He pointed it out to a colleague on the other side and said, 'If you will read my judgment I will read yours.' The offer was not accepted."

But with all respect to Lord Parker, the question of whether a cleavage of judicial opinion in accordance with political strata looks well or ill is no matter. Is it not, if you think of it, a thing

that is bound to occur? This story of the difficulties encountered by the Workmen's Compensation Act shows that if you entrust the administration of social reforms to law courts, you will meet with serious difficulties owing to the social and political bias of judges. The fiction that judges are beings of a different human nature from the rest of mankind has always seemed to me a remnant of folk-lore. There was a bias in Lord Abinger against poor Priestley's way of looking at things, but that in no way connotes that he delivered judgment in any unrighteous class spirit with intent to injure Priestley and the poor. His mind and the education and surroundings he had lived in caused that bias and he could not control it.

For what is "bias"? I have never been able to make out why the word should have a sinister meaning. Bias—as all good bowlers know—is that mysterious weight within a good "wood" or bowl whereby the skilful are enabled to direct it by an arc-like course towards adjacency to "the mark", which is the historic name of the jack. In Lancashire, where the game of bowls is played, as it should be, upon a crown green—and not, as in the South, on a tame, flat rink—the bias and the use of the bias make the glory of the green. By means of bias scientifically used we may reach "the mark" by the circuitous "round peg", or play straight up against the "watershed", as I once heard a geologist among bowlers describe the slope of the green.

What grave problems have to be judicially decided on the green as to the use of "thumb" or

"finger" bias before the "wood" is delivered! What anxiety is pictured on the face of the bowler! What contortions of his body are involuntarily indulged in as the bowl speeds on its way and does—or more often does not—carry out the intentions of the bowler!

And therein, I think, lies the secret of the evil meaning we have given to the word "bias." We see our "wood" careering across the green and hear it fall with a dull thud on the path beyond, and instead of blaming ourselves we blame the bias. Thus, owing to the alarming prevalence of duffers on the green and in the greater world surrounding it, the word "bias" has come to be regarded as a tendency that leads astray rather than a tendency that keeps straight and is up to "the mark."

And when I am asked whether there is bias on the English bench, I cheerfully reply that I hope and believe there is. I have met with unbiased bowls, and very poor "woods" they were. I have met with men almost devoid of bias, and I never found that they were continuously up to the mark. Bias is as essential as character to both "woods" and men. As far as I remember I have never met a judge without "bias" and seldom seen one whose bias was not fairly under control. We want bias on the bench because we like to feel that the men who decide our disputes are not mere automatic legal slot machines, but human beings, with likes and dislikes similar to ours, trained to hear and determine our disputes and honestly endeavouring to decide the cases without fear or favour. When judicial bias carries the judgment

beyond "the mark" we grieve not that the bias is there but that the bias has been wrongly used.

We must therefore expect when we hand new schemes to legal minds to find some of them misusing their legal bias in adapting their minds to what is really to them a new kind of game that they heartily dislike. The Court of Appeal had a bias against the Act, the House of Lords had a bias in favour of it. On the whole, things might have been a great deal worse and we must remember that the right bias triumphed as it usually does.

Moreover, the administration of the Act has been a success because insurance companies and employers and trade unions and workmen have largely striven for peace and goodwill, and either kept out of Courts altogether or when they got there helped the Judges and the Registrars of the County Court and their clerks to put their business through on business lines. We did a lot of unofficial conciliation on my circuits and the lawyers were very sensible in keeping their clients out of speculative litigation.

But although under great difficulties, not inherent in the Act itself but largely created by hostile judge-made law, the scheme was unsuccessfully administered in many ways, and the cost of making use of it was excessive, what alternative was there? The history of the Workmen's Compensation Act is worth reading because it brings you directly up against the problem, which to my mind is one of the great social problems of the future: Are the public going to trust the law courts or the bureaucracy with the regulation

of social schemes, or are they going to insist on the two acting in concert for the good of humanity, the lawyers abandoning some of their costs and technicalities, the bureaucracy sacrificing their secrecy, formalism and inaccessibility?

That the pitiable spectacle of the great English Courts of Appeal disagreeing openly about the first principles and intention of a simple statute, was a bad thing for the reputation of our law courts, was made manifest in discussions that took place in other English-speaking countries where Workmen's Compensation was about to be introduced.

When in 1915 the State of Ontario proposed to pass a Workmen's Compensation Act, the Chief Justice, who was called upon to draft a scheme, read our law reports and the cases I have described to you, and determined "to get rid of the nuisance of litigation." The English decisions in which workmen had failed to recover, though he courteously accepted them as "sound," did not fail, as he reported to his government, to shock his sense of justice.

The statesmen of Ontario, on receipt of their Chief Justice's views, decided that they would not throw their workers to the lions of the law, and leave them to the mercy of litigation, but would make a new experiment of administration by co-operation between the employers, the workers and the State.

Their experiment has proved so successful that it is worthy of our study, as it goes to show that in law, as in medicine, the best form of "aid" is not to call in a free doctor or take a patient to

a free hospital but by hygienic and sanitary methods of life to prevent the necessity of calling for the aid of either doctor or hospital.

And the way in which the Ontario Compensation Acts seek to achieve this end is by removing compensation cases altogether from the jurisdiction of the law courts. There are two main differences between their scheme and ours. In the first place, their Acts are administered by a Workmen's Compensation Board instead of by law courts, and in the second place, no matter what may be the length of disability, injured workmen are from the first provided with medical and surgical aid, and hospital and skilled nursing services, and are entitled to be supplied with artificial limbs or any surgical apparatus rendered necessary as a result of an accident.

This latter provision follows the methods of our war-pensions system and is a valuable benefit to the injured workman. Our system of giving an injured man a dole, or a legal right to claim one, instead of at once finding him the best medical treatment available is neither humane nor economical.

The Ontario Acts do not at present include as many classes of workers as ours, but new employments can be added at the discretion of the Board. The larger employers, such as railway companies and municipalities, etc., insure themselves and are liable to provide medical aid and compensation as required by the Board under the Acts.

Other industries, which include all the ordinary trades and employments, are called upon to pay the Board such sums as the Board orders in rela-

tion to the industry insured. These monies form a collective accident fund out of which the Board provides medical aid and compensation to the injured workmen. Workers not included in the scheme are still protected by Employers' Liability Acts.

A worker is entitled as of right to compensation for any accident where the disability lasts seven days unless the accident was caused by his serious and wilful misconduct. In cases of total disablement the compensation is two-thirds of the average weekly earnings, but must not be a smaller sum than $12.50. Partial disablement is calculated on a percentage basis according to the seriousness of impairment as in our war-pensions system.

These are, shortly, the benefits that an injured man receives during the healing period, but if the case turns out to be one of permanent disability the Board then assesses a monthly pension for life in connection with which there are powers of commutation and advancement

The procedure seems domestic and simple. The employer and workman choose their own doctor and the three send their reports of the accident and the injured workman's condition to the Board, who deal directly with the workman. No legal assistance is necessary. If the reports are in order the case is promptly dealt with by payment of a cheque. The Board, however, has power to institute an enquiry on oath before its officer and to call in the workman to be examined by a medical referee.

If we compare our system with the Ontario

scheme it must be at once apparent what benefits ensue upon the elimination of lawyers and litigation. Under our scheme the worker is left to find his own medical attendance—now provided to some extent by the panel system—and, unless his employer's insurance company chooses to admit and pay his claim, he has to employ a lawyer to take proceedings whilst he and his wife and children have to depend meanwhile on savings or charity. If by any chance his employer is not insured and has no means he can get no compensation. This sometimes happens.

Regard the matter from the employer's point of view. Under our system he, or rather his insurance company, may be involved in speculative litigation which, unscrupulously pressed, may carry him to appeal courts and waste much time and money.

These troubles cannot ensue in Ontario and not only are worker and employer benefited but the system of collective liability on which the scheme is founded is advantageous and economical to the whole industry. The benefits both in medical services and money are liberal but the rates paid by the industries insured are very moderate. For in Ontario you have insurance at cost, whereas we have to pay for the overhead charges of insurance companies and their profits, and expenses of getting business, as well as the actual compensation and law costs.

In Ontario less than two per cent of the assessments paid by the employers is absorbed in expenses. In Great Britain in 1920 £8,000,000 were collected in premiums whilst only £3,000,000

were paid in compensations. By a self-denying ordinance arranged between our Home Office and the Accident Offices Association the more reasonable insurance companies have agreed that they will not take more than forty per cent of the premiums for their charges and profits, but this is a heavy tax on industry compared to the two per cent in Ontario.

It is a good feature in any scheme of workmen's compensation or pensions that the money collected should be used mainly for the benefit of the injured and their families, but the history of these schemes goes to show how difficult it is to keep expenses at a reasonable ratio to benefits. The Ontario Board seem to have solved this problem and have no motive to give the workmen or his dependents less than they are entitled to, and no motive to charge the employer more than he should pay, for they have no interest in making profits.

A further benefit of the scheme is the direct influence it brings to bear on accident prevention. Any industry that lessens its percentage of accidents lightens its collective assessment immediately. This has been recognised by employers and the Board encourages them to form safety associations to study the best methods of preventing accidents and many of these have done useful work and the numbers of them are increasing.

When you weigh the advantages of administration over litigation in systems of Workmen's Compensation it is difficult to understand why we cling to our own method with its drawbacks of delay, uncertainty and expense. But there is one

drawback to the Ontario system that is perhaps inherent in all systems of non-judicial administration, and that is that decisions given by a Board are never so satisfactory to the persons affected as those given in open Court by a judge. The great advantage of the public hearing of a workman's compensation arbitration is that the parties and the public can all hear for themselves the evidence upon which a case is decided and the reasons given for the decision. This makes for confidence, whereas secret decisions breed distrust. Even if we adopted some such system ourselves we should probably not wholly deny to a workman who had been refused compensation some right of appeal of a public judicial character. It ought to be possible to obtain the main benefits of the administrative scheme without divorcing it entirely from the healthy influence of publicity and judicial criticism. The great majority of cases could be decided by administration, just as the great majority of disputes could be decided by conciliation, but for exceptional cases the right of access to the courts should be maintained.

The administration of Workmen's Compensation belongs to the Home Office and one would think they might do worse than send a representative to Ontario to study the local methods on the spot and report upon their efficiency. For the cost of our system is heavy. In 1925 the insurance companies seem to have made a very handsome profit. Their total income from the premium fund is £5,824,516. Of this sum, £3,078,813 or 52.86 per cent was allocated to the payment of compen-

sation, but note that this figure included all the costs, both legal and medical, of disputed claims so that we do not know what money was actually paid to the injured workmen. Of the balance 9.01 per cent goes in commission, 23.49 per cent goes in "expenses of management" and 16.15 per cent, including a small transfer from reserves (1.51 per cent.), is set aside for profits.

It is a costly affair and the lawyers certainly do not get very much out of it. From the pen of an unpaid lay arbitrator, who has spent many weary days of his life humbly waiting with the aid of the Junior Bar on these roysterers at their insurance feasts, the quotation drops with a sigh: "O monstrous; but one half-penny worth of bread to this intolerable deal of sack!"

Still the costs of lawyers, doctors and insurance men are, taken altogether, a big tax on industry and it might be worth considering whether the great benefits of the Workmen's Compensation Act could not be obtained by some less costly method. But in making any reform we shall have to consider how far the injured, and especially the widows and orphans of the workers who have fallen in the battle of industrial life, can be safely handed over to the mercy of departments. My experience is that the County Courts have been of real service to their wards of court and I am by no means certain that they would be so humanely dealt with by bureaucracy.

It is one thing in a new country, profiting by the experiments and errors of others, to invent a new and sensible scheme of Workmen's Compensation. But the citizens of Ontario did not hand

over their workmen to an existing Government Department; they formed a new institution suited to the needs of their case.

If the County Courts were to give up the administration of the Workmen's Compensation Act would it be better dealt with by the Ministries of Health or Labour or Pensions? The answer to that question requires careful thought. For if we are right in complaining that our law and its administration are not based on Gospel principles, can we honestly say that peace, goodwill, mercy and forbearance, are characteristics of the Civil Service or that they are sought after with greater zeal in Whitehall than in the Temple?

CHAPTER VII

A VOLUNTARY CIVIL SERVANT

Full little knowest thou, that hast not tride,
What hell it is in suing long to bide:
To loose good days, that might be better spent;
To wast long nights in pensive discontent;
To speed today, to be put back tomorrow;
To feed on hope, to pine with feare and sorrow.

SPENSER. *Mother Hubberds Tale.*—895.

IN the early years of the war it was apparent that there was grave and reasonable anxiety in the hearts of men, who were leaving the country for the front, about their position in case they were wounded and what would happen to their widows and children if they fell. It was my duty as magistrate to preside over a Conscription Appeal Tribunal and I had to talk to men who were called upon to leave their families and explain to them what the State and the pension authorities had actually promised to do. The specialists in Whitehall who issue their paper schemes lose a great deal by never seeing the patients their prescriptions are intended to cure.

You may remember that when Lieutenant Le Fevre was dying, and Uncle Toby was told of it by Corporal Trim, that Captain Shandy—good, simple man—cried out: "He shall not die, by God!" And "the accusing spirit which flew up to Heaven's chancery with the oath, blushed as he gave it in; and the Recording Angel as he wrote it

down, dropped a tear upon the word and blotted it out for ever." There was very little of the spirit of Uncle Toby about the bureaucrats who had the matters relating to pensions in their charge and the language they used was decorous but vague. Neither political party dared to face the cost of the business. There was an immediate necessity for some scheme to be published which should be generous, businesslike and prompt. War Pensions were still regarded by officials as a charity and the matter for the time being was left in amateur hands.

In November, 1914, Mr. Hayes Fisher urged the Government to deal with the whole question of putting the business of allowances to women and children, disablement pensions, and pensions to dependants of men killed, into the hands of one body sitting in one building under one roof.

Those were the days of "business as usual," and vested interests of officials had to be considered, and no doubt the Treasury cold-shouldered the suggestion. There were only some two hundred and fifty people dealing with pensions at that time. They lived in different departments and had their own little ways of doing things. But their complacency and imperturbability were too much for Mr. Fisher, who was told that his proposals were drastic, revolutionary and impossible. It was clear there was no Gospel spirit animating these departments or they could not have left the matter in the condition it was. Of course each department would say it was not their business and murmur the blessed words *ultra vires,* and in the nature of things you could not expect the

dignitaries of the Treasury to remember that it was more blessed to give than to receive.

Some sort of Select Committee was appointed and the matter slept. I remember reading Mr. Fisher's statements about the conflicting authorities of Chelsea Commissioners, Army and Navy Councils and Patriotic Fund Corporation and on November 22nd, 1914, I wrote an article suggesting that the soldiers and sailors and their dependants should be placed in a similar position to workmen under the Compensation Act and that their affairs should be administered by the County Courts if dispute arose between the claimants and the Government.

This suggestion was ridiculed or ignored. Even those who were friendly to it feared the cost and at the time I thought a unified control might do better for the men. In this I was wrong, for had my idea prevailed the country would have been saved a large sum of money, grave dissatisfaction and unrest would have been prevented, and I should not have been conscripted as a voluntary Civil Servant, and had to do the same job under very harassing conditions.

Nevertheless, nature's compensations are very wonderful, and I am a firm believer in the old proverb about the cloud and the silver lining. Had I never been shot and had to live with a bullet in my head, I should never have appreciated the true inwardness of neurasthenia, a subject about which I have special knowledge beyond the ken of any insurance doctor. And in the same way, if I had never been summoned to the assistance of the Ministry of Pensions and spent twelve very weary

months in endeavouring to sow the seed of justice on the stony ground of Whitehall, I should never have been able to study at first-hand the sclerosis that hinders the joints of the bureaucratic machine from reacting to the natural emotions of generosity, pity and mercy.

The judge of a county court does not come in very direct contact with bureaucrats. I remember once being surprised in Manchester that a Treasury auditor desired to see me. It appeared that an order I had drawn up and had printed—at my own expense, let me say—annoyed him. When a lump sum of money was paid into court for a widow and five infants, the dependants of a deceased workman, I did not apportion it, as that only made work for ledger clerks and was of no use to anyone, since the family would want it all long before the children came of age. So in my order the phrase was printed, "Apportionment adjourned."

Now the Treasury had made a rule that they would take on apportionment a half-crown or some such sum from each infant. The auditor came to point out to me that, as I did not apportion, the Treasury was not getting enough half-crowns. I rejoined that under the Act apportionment was in my judicial discretion and that for the present I had adjourned the matter. "But," said he, with tears in his eyes, "you never do reach the apportionment of any of these sums." That, I explained to him, could only be remedied by far larger sums being paid into Court, which would please everybody. I then quoted him a few texts about robbing the widows and fatherless and re-

ferred him to his chief, Mr. Lloyd George, who would, I felt sure, agree with my methods.

The idea of any official going out of his way to grab fees from the poor struck me as curious, but I gathered that departmentally he believed it would be a feather in his cap if he had succeeded. The sequel is also not without interest. Years afterwards these fees in Workmen's Compensation cases were abolished, and in a case where I thought it was necessary to apportion I received a message from another auditor that he hoped I was not going to adopt a system of apportionment as it added to the labours of his audit.

It would be absurd, of course, to draw any general inference from a paltry incident of this nature, but later on I discovered that the instinct of the lower infusoria of departmental accountancy is to annex or refuse to pay any sum however small, if this can be achieved without direct dishonesty. As the Lord Chief Justice said in criticising Treasury methods: "There is no doubt there is a type of economy which is closely akin to petty larceny." When you come to deal with the more responsible authorities this spirit is less apparent, and I am told that to eminent financiers who talk and think in millions the chiefs of departments are very amenable to reason.

My career as a voluntary Civil Servant came about in this way. During the early part of the war I was ordered to carry on with the Courts as usual, but in spare time I undertook magistrate's duties and at Lord Askwith's request investigated and reported upon, and generally managed to

conciliate and settle, labour difficulties, mostly in the North of England.

At the end of May the Government requested me to preside over a Pensions Appeal Tribunal, but before I could take up these duties I was commandeered by the Prime Minister to be Chairman of an Industrial Unrest Commission for the North-West Area of England. There were eight separate missions sent out and mine, which included Barrow, where there seemed to be a deal of trouble, was not the least important.

One would have thought that the information required by the Prime Minister would have been available in Whitehall, but I already knew, from domestic matters relating to County Courts, how dense is the ignorance of Heads of Departments about the woes of the little people whose destinies they direct. In peace-time the ancient habit of seeing things without observing them and opening the ears without hearing may not mean disaster, but in war-time it is a danger. Anyhow, Mr. Lloyd George sent out special messengers of his own to inquire and report.

On Tuesday, June 12th, 1917, the Prime Minister received us all in Downing Street. He briefly told us that what he wanted was the truth about the causes of industrial unrest; facts not theories. We were to act speedily and report in three weeks' time. I remember his using a phrase about "grit in the wheels" that took my fancy. He wanted to know where it came from. He suggested we should meet people in private consultation. I asked at the end of the business

whether public meetings were forbidden and was told the whole business was my responsibility. I was rather glad of this, as I knew that in Lancashire we should be challenged somewhere to come out into the open. This happened when we reached Barrow, and in spite of local fears we had a very pleasant meeting.

My colleagues were Mr. J. R. Clynes, M.P., and Mr. John Smethurst, a great authority in the cotton world. I was fortunate enough to obtain an old colleague, Mr. Macdonald, a clerk of the Manchester County Court, to act as secretary, and on Thursday, June 14th, we were in Manchester in the whirl of interviews and deputations and reports and inquiries. Knowing Lancashire as well as we all did, it was easy for us to ask, and we received in full measure, the assistance of the Municipal authorities and the heads of the great industries and labour organisations.

Even if we regarded the Commissions as mere ventilating shafts to permit disgruntled workers of all classes to articulate disgruntlement to sympathetic ears, the job was worth doing. But they fulfilled a larger purpose than that, and if any reader cares to turn to their reports he will learn from them a great deal about the practical difficulties of industrial affairs and the effects on business of departmental interference.

I was amazed at the hostility to departmental methods that was expressed by all classes. Everyone complained that if local affairs had to be directed from London, it ought to be strongly impressed on the permanent officials that they should deal with things promptly, sympathetic-

ally and in a business spirit. The Prime Minister had said it was the common duty of all good citizens at the present moment to get rid of the "grit in the wheels" which was obstructing our common purpose. Lancashire's comment was that most of the grit in their wheels was London clay. It was, for instance, surprising that in Manchester where the working of the sugar regulations was causing grave discontent, there was no public official responsible to the department who could give us any information about the matter.

We had hosts of complaints from poor people that the Government were not carrying out their widely advertised promises about a fair distribution of sugar. Working people hunted from shop to shop and could get no sugar. Their women and children were left without it for days, and of course the belief arose that it was all taken for the rich. This was not correct, but there was abuse, and the only remedy for the victims of it was to write to London, as there was no one on the spot even to receive a complaint, much less to redress a grievance if a real one existed.

Another trouble, that was more loudly voiced by employers than by any other class, was the vacillating and uncertain policy of London authorities and the arrangements which were made to-day and abandoned to-morrow without any consultation with local firms that had to work them. Business men regarded Bureaucracy as if it were a large business in which the various departments were branch concerns. It was puzzled, and harassed, and in some cases driven to distraction by contradictory orders arriving by the same

post from different departments about the same business. As a big millowner said in his despair, "The chief cause of industrial unrest in Lancashire to-day is the alarming prevalence of . . . . fools in Whitehall." He was, of course, absolutely wrong. The denizens of Whitehall are able, clever and courteous, but they are not businesslike and their system and traditions are not based on either efficiency or righteousness.

We had ourselves curious little examples of what the Lancashire manufacturers suffered from. We received a notification from the Treasury calling upon us suddenly to cancel all our advertisements. This would have caused several days' delay in our work. We filed the telegram and went on with our work. But a more entertaining business was the conduct of the Stationery Office. Close to our headquarters was the Manchester Branch Stationery Office who were eager to assist us, and when they had begun with the printing of our report, they were suddenly ordered from London to give us no more help and to stop printing. Here I took on myself to order the printers to go on with the work and became responsible to them for their bill. We had to wire and write to Mr. Barnes, the Member of the War Cabinet in charge of our work, and of course these matters were put right. But what astonished me was that the Prime Minister having publicly ordered the Commissions to get their work done at top speed, some ancient barnacle in a third-rate London Department should put grit in the very wheels of the Prime Minister's own pet machine in time of war, merely because he desired to snub an over-

zealous under-official in Manchester who was trying to get things done. If we had started corresponding with London about printing our report of course it would never have been printed in time to be of any use. As it was, I started dictating it at eight o'clock in the morning of July 6th, sent it all to press, some 20,000 words or more, and had batches of proofs in hand before 3 a.m. the next morning. We signed the report on July 9th and Mr. Barnes had it some days before any other one came in. This peep into the realities of departmentalism, and the evidence I had been listening to of the way we were governed, gave me some anxiety as to what I should meet with in the Ministry of Pensions.

I had taken away with me and studied at odd moments anything I could lay hold of as to the origin of the Ministry of Pensions and its duties and powers. There had been an interesting debate on November 21st, 1916, when Mr. Hayes Fisher, who had now become Parliamentary Secretary to the Local Government Board, had introduced a bill to unify the different Pension authorities. There was now a Statutory Committee of citizens with Local War Pension Committees to meet cases which the other authorities could not or did not deal with, but it was insufficiently financed. Mr. Fisher in his speech pointed out that when as a private member he had urged movement in 1914 there were only 5000 widows to be dealt with. There were now 50,000 and the machinery to deal with them was still wanting and confusion was getting worse confounded.

Mr. Hayes Fisher understood what was wanted.

"There should be some body," he said, "with a human head and a human heart, to pour the oil and ointment of compassion on sore places."

In his view a Government department, however sympathetic the officials might be, was in the nature of things bound to have rules or regulations which would hinder them relieving cases worthy of relief. He told the House there were already 50,000 discharged and disabled men refused pensions, and declared "with the utmost confidence that there are hundreds of them, if the matter were left to the House, who would have pensions." It is a pessimistic thing for a minister to say that a government department is incapable of doing justice, and its rules and regulations are bound to result in injustice. If it is so, and I am inclined to think that it may be so, there must be a reason for it and it is worth discovering.

The difficulty about pensions apparently was that the Government could not formulate a policy, the Treasury did not find enough money, and that when you came to the department already hampered by these initial troubles "nobody seems to have had the will or at any rate the power to decide anything." Even in the new Bill it was not enacted that any individual should be responsible for granting or withholding a pension, nor at any time was any Appeal Tribunal set up, though Mr. Fisher was clear that some independent Court of Appeal was wanted. Mr. Forster, the Financial Secretary to the War Office, himself deplored that the "War Office and Chelsea have never been in personal contact with the pensioners, and one of the greatest drawbacks of our

present system is that those who have to fix the pension, fix it on paper only and are never brought into actual living contact with the individual." But who these officials were was a departmental secret.

Mr. Hayes Fisher, after a few weeks, dropped his original proposals, and in December turned his Bill into a Ministry of Pensions Bill. At the end of March, 1917, new Pensions Warrants were issued with new regulations, the Statutory Committee, which had done much to temper the wind to the shorn lambs who were refused shelter by the departments, was abolished but was set up in a new form and called "A Special Grants Committee."

Things had not improved for the victims of this system between December and April and a crying grievance was the position of men accepted as fit for service by Army Medical Authorities and discharged as unfit owing to broken health. On the 29th March Mr. Bonar Law as Chancellor of the Exchequer admitted that these men had a claim for consideration and he promised to ask the Cabinet to set up an independent tribunal to which those refused relief might appeal.

This was shortly what I learned of the position of things, and it was not reassuring, but it did not seem a time to stand upon ceremony, and I reflected that if I did find myself unable to do justice as I had been taught it should be done, I could always return to my proper sphere. There was no pay attached to the business other than what I was in receipt of, and whether I was for the time being a Civil Servant or a wholly uncon-

stitutional judge, or an understudy of the Minister of Pensions wielding some of his statutory powers, was an academic matter about which I did not trouble my mind.

The Tribunal consisted of myself as President, Admiral Sir Wilmot Fawkes, G.C.B., K.C.V.O., Lieut.-General Sir Alfred Codrington, K.C.V.O., C.B., Norman Moore, M.D., Bilton Pollard, F.R.C.S., and Albert Bellamy, C.B.E. There was no doubt that, apart from myself, the Cabinet had selected men of the very highest eminence in their profession. They had, it appears, endeavoured to get a High Court Judge to preside but had not succeeded. I am not in the least surprised, for to the normal judicial mind the post was an absurd one, as there was no issue to try, no decision to appeal from, and no defined judicial duty of any kind. We met on Saturday, July 14th, 1917, and the first thing we decided was that before we took upon ourselves any responsibility, the limits of such responsibility should be defined by some Terms of Reference.

The officials wanted us to start hearing appeals of some kind straight away, but I was determined not to move without defined authority, foreseeing that nothing would please our kindly hosts better than that we should involve ourselves in the general muddle by which they were surrounded. For though we were received with every courtesy and civility, it was obvious that from a Civil Service point of view we were very undesirable people and the sooner we were got rid of the better.

Mr. Barnes was then Minister of Pensions, and

after some discussion with his permanent officials he signed a minute appointing us an Appeal Tribunal to decide appeals on his behalf on the facts of disablement, but not as to the amount of awards. This was our charter of incorporation. Whether we had any legal power to do what we were ordered to do was not my business, but on the 25th July we had a definite job and I had arranged a definite procedure of a simple but, to the departmental mind, somewhat amazing character.

The Service members and Mr. Bellamy, who had been President of the Railway Union, were a tower of strength to me in supporting and formulating our procedure, and the medical members were insistent upon seeing every case personally. The permanent officials were aghast at our revolutionary methods, but as Mr. Barnes had definitely instructed us to decide for him whether a disabled man's condition was attributable to or aggravated by war service, we were really the Minister for that purpose and the officials, within reason, had to do as they were requested to do.

I remember being greatly surprised that the Ministry had no library and no one in the service seemed to have studied other pension systems. I went off to the British Museum and spent a day among American and other pension books with a view to picking up hints for our work. We had only a secretary and an assistant-secretary and I was determined to keep things as simple as might be. General Codrington was exceedingly skilful in practical ideas of procedure and we were

all of one mind about what we wanted to do and everyone helped.

Knowing from experience what a curse forms and rules and regulations are to poor people, I cut these things down to the limit. There was a notice of appeal to be filled in and signed and the Local Committees agreed to help men to do this. This was to be sent to the Ministry. If within thirty days the Ministry did not allow the appeal then the notice was to come to us and we could hear the appeal.

This was the source of much argument. The officials wanted to send us only such appeals as they thought worth while. The idea that an appellant had such a thing as a *right* of access to a Court of Justice, and that we considered our Tribunal to be a public court, was an idea as novel to them as it was unacceptable. Nor was this at all remarkable, for I do not know that there was any precedent in departmental circles for a tribunal in which ministerial decisions should be made the subject of public discussion and revision.

For when they heard that we had decided to sit in open Court, that we proposed to travel for that purpose to the great centres of population in England, Scotland and Ireland, that the appellant was to have his expenses of attending our Court, that our medical members might examine him, and we could all hear his story, and that we expected to run a show of this kind with a staff of two persons and answer all our letters and keep an accurate card index record of all our doings, they thought we were out of our senses.

Looking back on the affair I wonder how and why in a departmental world we were ever allowed to make a start, but I fancy that the official idea was that our balloon would either not rise at all or, if it did, would be punctured and destroyed in the thorny fastnesses that surround the Treasury.

The Ministry and the representatives we came in touch with were courteous but disbelieving. However, they fell in with our ways as far as possible. Their representatives attended our sittings, not with a view to opposing the appeals, but to hear what passed and to provide us with the dossier of each appellant. These gentlemen were not permanent officials of the Ministry but war volunteers, one of them being a very eminent retired Civil Servant. With these good friends our relations were most pleasant and in time they got half converted to our eccentric behaviour. The drama of personal characters telling the real stories of their war service, and the contrast between these narratives and the fictions of the dossier, were bound to interest any man of intelligence to whom the elementary procedure of administering justice was a new and strange thing.

On August 14th, 1917, we sat to hear our first case. It was really an historic occasion as it was the first time that a man claiming an army pension had ever had a hearing of his case. Hitherto when a man was invalided out of the army a Form B. 179 declared the cause of his disability. Behind that statement no one could go. It was *res judicata*. In this, our first case, the sole cause of the man's disability was "anchylosis of right

thumb." This the man admitted was caused by a cycle accident six years previously and existed when he was recruited. It was clearly not true that he had been discharged on account of this disability because he had been accepted with it. But he was a man of poor physique who should never have been taken for army service. From 1912 to August 1915 he had worked as a decorator without illness. Under Army conditions he had suffered from severe colds, asthma and pneumonia and was now incapable of doing any hard work or work of a continuous nature. This condition was obviously "attributable to or aggravated by" his service and his appeal was, of course, allowed.

This man had been discharged in December, 1915, and had been endeavouring to obtain a hearing until August 17th, 1917, and, as Mr. Bonar Law said, there were many in like position whose pleas were awaiting attention. As the case might serve as a precedent, we wrote our judgment which was delivered on August 30th.

Judgments in several other cases of importance were written and delivered, and I was now in hopes that the Ministry would start some system of making some definite officer responsible for each definite refusal to admit to pension, so that there would be a real decision from which to appeal. Several of our judgments were actually printed and circulated for official use, but this was soon discontinued and we remained a kind of court of first instance and appeal combined.

In America, Pension Appeal judgments are published in the same way as other appellate de-

cisions, and act as precedents to all courts of first instance. But to the end of our time we remained a kind of court of first hearing and no definite decision was ever given by any official from which a real appeal could be made.

Nevertheless, our decisions being the Minister's decisions were more or less acted upon as they became known, and as we sat in open court they were sometimes reported in the Press. But the Department were evidently determined that they would maintain the old policy of refusing to endow any of their officers with any duty or responsibility of actually deciding any particular case; for it is an axiom of bureaucracy that the responsibility of ministerial action lies in the Ministry, whereas it is an axiom of business and human life that the responsibility of action must lie in the human being who acts. This is fully recognised in the Navy and Army but not in the Admiralty or the War Office. If the Ministry of Pensions had delegated the power of giving decisions to certain officers and made them responsible for their decisions, then the Appeal Tribunal could have heard appeals from their decisions. In this way a great deal of cost, worry and delay might have been avoided, and a system created which would have satisfied the public and been of service for the future.

How curious were the ways of departmentalism may be judged by the following incident. On one of our first appeals a paper on the dossier appeared to show that the case had been decided by a very high official at Chelsea, and in our decision, without naming him, it was mentioned that we felt

bound to over-rule the order of Deputy X.Y.Z, or whatever his title was. I heard that he felt aggrieved at this and, being at Chelsea, I called upon His Eminence in order to apologise for our blunder. I had not then fully realised the holiness of the doctrine of departmental irresponsibility.

I was told that he was a fierce and fiery old warrior, but I found him reasonable enough. I explained that in my business when I decided a case I was often over-ruled by a Court of Appeal and they in turn were sometimes over-ruled by the House of Lords. I think the mention of this august body and my remote connection with it satisfied the old gentleman that I was more or less respectable. He explained that any such procedure in the Ministry would be sacrilege. "I never decide any man's case," he said. "I merely advise the Ministry."

I pointed out that a decision had been given by someone and the Minister had asked us to uphold or over-rule it. He showed me that it would be absurd for him or for anyone else in the office to make a decision. The Ministry alone made decisions. All he did in fact was to read the dossier and then take a buff form on which a phrase occurred with the words "do" and "do not" printed alternatively; then he struck out one of these and initialled the form. I felt that I was in the magic world of Laputa.

However, after some pleasant talk I agreed that I would never refer to anyone again by title or initials but if we used any phrase it should be "the competent military authority," words I had

seen upon a notice somewhere, which had struck me as complimentary but probably inaccurate. This diplomatic suggestion he received with high favour and when I left his office he walked with me to the terrace outside his rooms, and shook hands very cordially as he said farewell, whilst several boy scouts who guarded his headquarters stood at salute.

I fancy some of the underlings at Chelsea, who had heard of my offence, expected that I should be sent to the Tower and were amazed when they saw me leaving in state, as it were. But when you got used to their queer ways, all these people were very civil and kindly to you, though no doubt they thought you were as absurd and dangerous to the community as I knew them to be.

But when we left London and went on tour we were received with great enthusiasm. I felt that my colleagues were exceedingly good in falling in with this part of my scheme. They were not young men. Mr. Pollard, the eminent surgeon, had retired on account of ill-health and was living in Devonshire. But he and Dr. Norman Moore were enthusiastic workers on our board and their kindness and attention to the men who came before us was a splendid example to any official whose work lies among human suffering.

On one occasion, hearing of a man in remote Norfolk unable to travel they set out in winter to visit him and hear his appeal. On another, at Edinburgh, we heard of a poor lad lying in a garret at the top of a huge building whose mother claimed that he had a right to a pension and they

obtained a guide and found him out. Every man who came before the Tribunal was examined by these two eminent men with the same care as if he had been a millionaire visiting Harley Street. At the board of the Tribunal the man's own story was listened to with patience, a course that often evoked spoken gratitude from men whose cases had been turned down for months without ever being heard. It was a new and, to them, a remarkable experience that they had had a hearing.

Up to that time the Ministry of Pensions had been to each of these men a god sitting on a cloud, ruining his life with unjust decrees and cruel usage, and he had cried in his heart: "Neither is there any daysman betwixt us, that might lay his hand upon us both." And now a miracle had happened. Here was not one daysman but half-a-dozen, all amiably disposed toward him and ready to hear his complaint.

At first we were told that it would not be possible for us to travel, and the Treasury would not sanction our paying for the hire of a building to sit in. I said I would undertake that in Manchester, where we started our tour, the Corporation would find us a place to sit in. Of course they did, and at Edinburgh, Glasgow, Leeds, York, Birmingham, Bristol, Newcastle-on-Tyne, Cardiff and Belfast we were given splendid accommodation either in the Town Hall or the Law Courts. The local War Pensions Committees rejoiced to see us and the Corporations and their officers gave us a hearty welcome. I often laughed to myself when I was called upon to say a few words in response to an official welcome and

uttered pleasant platitudes about the work of the Ministry. There was a war on and it was everyone's duty to appear optimistic. Even a voluntary Civil Servant had to stick up for his department and I spread abroad, wherever we went, the good intentions with which its avenues were paved.

But from the first we worked under difficulties and discouragement. To begin with, the appeals were not sent forward. No less than 576 were notified to Chelsea by September 12th, but we had only received 26 ready for hearing. Nothing would induce the Department to set up a court of first instance and have cases decided by a responsible official and then send us the appeals for his decision. By the end of September we had only been able to hear 34 appeals. Then, in response to protests, an "Appeals Tribunal Section" was appointed at Chelsea and we got cases sent along.

It was obvious, however, that an Appeal Tribunal of the important nature of our body could not remain in permanent session unless it was only used for real Appeals, and as this was never attempted, it could not be expected that we should continue to travel the country to hear cases which had never been properly investigated by ministerial officials.

In the spring of 1918, Mr. John Hodge who was now Minister, explained to me that he was going to start a new procedure. He appointed an old friend and pupil of mine, Adshead Elliott, afterwards County Court Judge in Sheffield, to take my place and on Friday, June 28th, 1918, we held our last sitting. We had tried 927 appeals

in all parts of the country. We never enlarged our staff, and left behind us a card index record of what had happened to every case which was sent to us and we had answered all our letters. As a concession to a dissatisfied public in time of war, and as a Court of Justice to deal with the cases it heard, and as a stimulus to the departmentalists to make some reform of their procedure, we were not without our uses. Moreover, owing in a great degree to the self-sacrifice and ability of our medical members and the fact that we sat in open court, we had made it impossible that for the future ex-service men and their friends should be embittered by the nonchalance and neglect with which their just claims had hitherto been treated.

After our work was ended General Codrington and I published a short history of our pension system and included a report of some of the actual cases we tried. The Ministry resolutely refused to organize within their walls any hearing of a case before an officer who had power to hear the case and give a decision. But Parliament made pensions statutory rights instead of charity, and in 1919 created Statutory Appeal Tribunals, and ultimately these were given power not only to reverse the Ministerial order as to facts but to revise by increase or decrease Ministerial decisions as to money payments.

I was interested to find in December, 1919, when the procedure for the new tribunals was issued by the Lord Chancellor, that the simple methods we had instituted were continued. Indeed, the work we had done had made it impos-

sible that the Ministry would ever be allowed again to continue to do the work for which it was created on the methods of irresponsibility, and though the machine that was created to obtain justice for pensionable citizens was cumbrous, it was better than nothing. One thing was clear in my mind after this experience, that no citizen has a reasonable chance of obtaining justice from a department, unless he has access to some independent tribunal that understands not only what justice is, but the methods of securing its administration.

Whilst I was studying the early history of war pensions in this country I became firmly convinced that to understand the reason for the curious conduct of affairs which I had witnessed daily for twelve months, I must dig deep down into the traditions of Departmentalism. The study of the history of the Civil Service is vastly entertaining and I made a lot of notes of what I read because it cleared up for me the problem I was then dealing with. Recently when I began to consider why the law failed, to so large an extent, to fulfil its promises to humble citizens I naturally had to consider whether, if we scrapped the law courts and threw our burdens on the State, we should meet with greater sympathy and attention in time of trouble. Now after thirty-three years of the County Court you might easily get into a frame of mind that would lead you to accept any new form of administering justice to the poor in lieu of that which exists.

I believe I have discovered one reason for the law's failure to do justice to the poor when I say

that it does not base its administration on the highest teaching it knows. But if this is true of the law it is more obviously true of the Departments. The methods of law and justice in our courts are immeasurably superior to the efforts of bureaucracy towards the same ends. When I made my memorable incursion into departmental demesnes and preached our gospel of justice, such as it is, to the melancholy inhabitants who browse on buff paper in palatial dust and discomfort, I must indeed have appeared to them to be, what I probably was, a spiritual Pharisee of unpleasant demeanour.

For how could anyone who knew the conditions of the County Courts dare to sit in any kind of judgment upon the Departments? But in reply to that I should have pleaded that I had for long considered the beam in mine own eye, and if it had really been my very own beam to do what I liked with, it would have been cast out long ago. Then I should have argued that theologians are generally agreed that there are various degrees and depths of hell, and no one who had seen Chelsea in full blast, as I had, could reasonably suggest that it was not on a lower plane of damnation than the Lambeth County Court.

But, of course, if at that time I had known it, I ought to have said to the Ministry of Pensions officials: We of the law have never based our affairs on Gospel teaching, and have made an unhealthy mess of things in many ways, but we have heard of the Gospel and, indeed, have it preached to us in the Temple Church, so there is less excuse for us than for you. Obviously, by

the way you treat your victims, you have never heard of Gospel teaching. I suppose I ought to have tried to convert them. But I had not the gifts for these great adventures and merely went to work to make the best of a bad job in the ordinary pagan way.

Of course if lawyers and departmentalists would both base their systems on right teaching, and work in combination, great work might be done. In this Pension experience I saw that at long last the poor got some justice and the department can at least boast that the business was far more economically worked than the compensation of workmen is worked by the Insurance Companies. Let us cheerfully admit that an ex-Service man did not have to pay costs if he failed to establish his claim to a pension. Indeed, once the Ministry were convinced that Parliament insisted on a man's case being heard, then their clerks were very gracious to our Tribunal. But they would not tolerate such an eccentric procedure in their own holy places.

And the reason of their failure to deliver the goods to the poor is the same as the lawyers'. Both are in the same boat heading for the same rocks, because they will not take on board a compass set by Gospel teaching. And to understand the unhappy relations of departmentalism and humanity you must read something about the unfortunate parentage, birth and education of bureaucracy, for to know all is to forgive all.

CHAPTER VIII

DEPARTMENTALISM AND HUMANITY

> But to feel their souls withering within them unthanked; to find their whole being sunk into an unrecognised abyss; to be counted off into a heap of mechanism, numbered with its wheels, and weighed with its hammer strokes; this nature bade not—this God blesses not—this humanity for no long time is able to endure.
>
> RUSKIN. *Stones of Venice* II. ch. vi.

IN an essay of this length little more is possible than to state the central idea, illustrate it by a few living types and leave the reader to consider whether the disease has been rightly diagnosed and the remedies suggested are likely to be effective.

We have seen in the short account of the working of the Workmen's Compensation Act how the law took sides against human ideals. We have seen in the conduct of War Pensions how Departmentalism failed to function and had to call to its aid citizens to manage local committees and form tribunals. Now both these subjects were chosen for the purpose of illustrating the main theme of the Gospel and the Law, since it will be commonly agreed that they are both schemes in which the citizens of the country were moved by feelings of sympathy, brotherhood and charity, that Parliament succeeded to some extent in interpreting the wishes of the country, and that the law courts and still more the departments were pathetic failures until the citizens by long-continued exertion got some of their wishes realised.

The reason for the failure lies in the fact that whilst humanity is desirous to find the oil and two pence, the Priest and Levite have always excellent economic reasons for not expending them to help the poor. We must, therefore, base our laws on Gospel teaching and we must get our judges and bureaucrats to interpret and administer our laws on that basis. I have hopes of the law, for the County Court Judges did very well in the business, and as unpaid arbitrators they managed to stick gamely to the Act and its principles, and delivered the goods Parliament had entrusted to them with conspicuous success. The Registrars and their clerks, too, were willing and ready to help injured men and widows and orphans in making the best of things.

And the law will at least do this for you, it will take the responsibility of giving you a decision. Bureaucracy will always evade this as long as possible. Even in matters of the deepest human importance it will not move. Not even for Princes will departments make a decision. When Prince Frederick William was born, Lord Chesterfield writes that at last the child was christened "after having been kept at least a fortnight longer than it should have been out of a state of salvation, by the jumble of the two secretaries of State, whose reciprocal despatches carried, nor brought, nothing decisive." What can you hope from such people? There is no tradition that in any age bureaucrats recognised any duty to their neighbour. And what depresses me is their history. Go back as far as you will, there does not seem to be evidence that department-

alism was ever much worse than it is to-day. If it had ever been conspicuously worse you might hope for movement or evolution. But you find everywhere the same placid complacency, the same belief in form and system, the same contempt for and impatience with human ideals, the same stolid, obdurate immobility which are, perhaps, the conglomerate rock of ages on which departments are built and the secret of their security. The very permanence of the permanent official is what breaks the heart of humanity.

Many years ago I was greatly impressed with this condition of things and sought, but did not find any human history of departmentalism. But in my desultory way I have collected scraps from divers blue and dusty coloured volumes of records, and from biographies of the unfortunates who ventured too near the mazes of bureaucracy and were lost to the world, and the rare sagas of the few great ones of the earth, like Joseph and Moses and Rowland Hill, who entered the holy places, reduced the departmentalists to obedience, and made them worship at their footstools.

One basic trouble about bureaucracy is undoubtedly that in its origin it was priestly and it has not got away from some of the worst attributes of priestliness. All the Civil Services I have ever read of have been blighted by caste and tradition. The heads of the departments are mandarins, the practices of the departments are old-world superstitions. In China a *high official* must be *kwan* and have a button on his hat. Our heads of departments are all *kwan* and all have buttons, or ribands, or alphabetical synonyms of decoration.

Buttons represent caste, not competence. Buttons can only be obtained by the Civil Service acolyte by devoting himself to the adulation of high priests and the orthodox acceptance of ancient creeds. In this way only can the young bureaucrat hope after years of servile toil to become *kwan* and attain to buttons. There is nothing new or extraordinary about this. It is as old as the world. In times of peace and stagnation it is no great matter. In times of war, ferment, revolution and human stress it spells ruin.

If you can get away from the lessons of schoolmasters and priests who, at all events in my young days, used to teach history as though it was all myth and myth as though it was historic fact, you will find that Civil Services from the earliest days have been unable to cope with emergency or foresee coming disaster or alter their routine to meet new circumstances.

Mr. Cary tells us that the Egyptian bureaucracy of the Pharaohs was a highly civilised, complex, administrative machine. It had in a high degree *la culte de la paperasse* and could docket, minute, initial and file in a pigeon hole with the best in Whitehall. Also at enormous expense and under the very worst labour conditions it did things. It built canals and dikes which were serviceable to humanity and pyramids which were not. Indeed, some five or six thousand years ago Egypt had a Civil Service run on much the same lines as our own and undoubtedly dominated by the Treasury whose chief was second only to the Vizier or Prime Minister.

Now when I was a small boy my teachers used

to tell me about Joseph with far less realism than Defoe told me about Robinson Crusoe, so that I was inclined to accept the former as a fairy tale and the latter as an affidavit. But when you have worked in Whitehall and read something of the discoveries of the Egyptologists you can approach the Book of Genesis with the trust and confidence with which you open a Blue Book.

For what happened in Joseph's day was exactly what has happened over and over again and will probably continue to happen for æons. Pharaoh, you will remember, had a dream. Many kings have had dreams and visions. Democracy in our own day has some excellent dreams. Pharaoh "sent and called for all the magicians of Egypt and all the wise men thereof; and Pharaoh told them his dream." This is exactly the modern practice. The magicians were a kind of established clergy and the wise men were bureaucrats. Doubtless they looked up their precedents and not finding that the dream, or anything like it, had happened before they refused to have anything to do with it. This also is consonant with the ritual of to-day.

Pharaoh, however, was naturally and properly impressed with the importance of his dream. All sane dreamers are. He saw there was something in it, though he had not the foresight and genius to interpret it. Then, as you will remember, he talked the matter over with his butler, who told him about Joseph, and Pharaoh sent for Joseph. Butlers were even then men of insight and sense. Now Joseph was not even an Egyptian citizen; he was an alien Jew slave. He was not in any

sense *kwan* and had no button, riband or decoration—not even a university degree. But so great was the power of Pharaoh that as soon as he found that Joseph understood the dream and had a plan in his head for the welfare of the country, he called his Civil Servants together and said to them: "Can we find such a one as this is, a man in whom the Spirit of God is?"

Now I have not the least doubt that the Egyptian Civil Service would have willingly controverted Pharaoh had they dared, but Pharaoh was far more powerful than modern democracies are. So Pharaoh set Joseph over all the land of Egypt. And though I have no doubt that at first the magicians and scribes tried to put grit in the wheels of his chariot, yet once Joseph held the reins it was obvious he would make good, and he did.

This to my mind, is the leading case for the principle, which has constantly been illustrated in our own history, that bureaucracy without effective citizen control is incapable of just and effective government. And note that had Pharaoh not taken this step, though, no doubt, the Court and the upper classes would have had enough to eat, the poor throughout the land would have starved. With this story before them—I assume the Book of Genesis is in the libraries of Whitehall—it amazed me, when I went on the Industrial Unrest Commission, to learn that our magicians and scribes had no plan for regulating food distribution, though fortunately when the necessity was pointed out to them they had the good sense upon pressure to immediately stage a Food Min-

istry, with Lord Rhondda featuring Joseph, which was as well deserved and popular a success as Joseph's Corn Ministry itself.

Nearly a hundred years ago Joseph Mazzini, whose social prophecies are well worth studying to-day, put the matter we are considering in a nutshell when he wrote: "Two things are necessary to the realisation of the progress we seek: the declaration of a principle and its incarnation in action." The first is the prerogative of humanity; the second is the duty of departmentalism. The democracy may determine that they want their affairs managed on Gospel lines, but the elders of the departments may determine that the use of the Gospels as authoritative guides to departmental procedure would be unprecedented and inconvenient.

This may recall the colloquy of the Old Gardener and his apprentice in the Queen's Garden at Hampton Court.

Old Gard: Should I do my duty think you if like an ignorant, I let these trees and hedges ramble to confusion? Are the trees and flowers to grow my way or their own?

Young Gard: God's way as I think.

Old Gard: Nay, I'll have no interfering in my garden.

That will, I fear, be the answer of Whitehall to the message of the Gospel. It is a tradition of the office as it is a tradition of the garden that the old gardener's way is the only way.

And some say, not altogether without reason, that if we had left the Civil Service as it was

in the old days of patronage, our gardens would have been better kept than they are to-day. There was certainly an aristocratic dignity about some of our offices of fifty years ago that was not without charm. We have put new wine into old bottles. The flavour and bouquet is gone and there is, if anything, less nourishment than before. Yet when we made reforms during the last hundred years, and we have made many, we were always full of hope.

And in our own history on rare occasions when the tyranny of tradition has been too much for humanity to bear we, too, have found our Josephs ready for public service. You find them even in the myths of the countryside where Jack the Giant Killer disposes of the local government ogre, and Robin Hood outwits the Sheriff. John Hampden is, perhaps, the leading hero in history for it is too soon as yet to have canonised Rowland Hill. It is always a cheerful task to praise famous men, and for fear our hearts should despair at the apparent victory of the unclean spirit of officialism in the guidance of our destinies, let us always remember the life history of Rowland Hill. That and The Book of Job will bring comfort in the worst afflictions that bureaucracy has in store for mankind.

Rowland Hill was a human being, a common citizen like ourselves. He spent his life fighting Departmentalism in the interests of humanity —and he won. His case, therefore, is as encouraging as it is strange. Many human beings have had contests with the departments. Some have died of broken hearts and their relatives have buried

them in obscure graves, others have retired to asylums, a few have gone over to the enemy and like all perverts have become more departmental than the departmentalists. But Rowland Hill did none of these things. He stuck it out and finished top dog and Departmentalism for once experienced the true downwardness of the other animal.

Rowland Hill was well-equipped by providence for his fight against the Gorgons, Hydras and dire Chimæras of bureaucracy. He was born in the Midlands. His father and mother were middle-class people unburdened by money, owning traditions of liberty and justice dating back to Hampden. His father, Thomas Wright Hill, was a schoolmaster, and although at first sight this may seem an impediment, yet the man was not as other pedagogues, for he was an ardent reformer and his children were "born to a burning hatred of tyranny." Such was the atmosphere which the child Rowland breathed in the first years of the nineteenth century.

The old man conducted his school on lines that would have been dear to the heart of Wilkins Micawber. He thundered eloquently against mummery and routine but he was a martyr to unpunctuality and unbusinesslike methods. These things seared the soul of the young reformer. At the age of twelve he was moved to make a protest against the irregularity of school hours and the complementary and more distressing unpunctuality of the dinner hour. He persuaded his father to new regulations concerning the ringing of the school bell and then approached his mother on

the larger subject of having dinner at the appointed hour.

"My mother said it was impossible to have the dinner at the exact time, as a large leg of mutton required more time to roast than a smaller one"—what a sound Departmental reason—"I said no doubt it must have more time, but the cook must begin earlier. She gave in on my earnestly desiring it."

In this childish, homely anecdote we see foreshadowed the career of the man. His mind already revolts against the unbusinesslike. Bells should strike, if at all, at certain and not uncertain hours. Legs of mutton should be roasted for the appropriate number of minutes. If necessary the hour of roasting should be set forward or back according to the size of the joint. Inquiry and foresight coupled with experiment should be undertaken in the culinary department to deal with this matter. He approaches his father, the philosopher, as to the bell-ringing, and with some difficulty persuades him to a course that shall lead to certainty in this matter. The dinner bell will ring at one henceforth; but the dinner—? He interviews the head of the department, his mother. She, true to departmental type, says it is "impossible to have dinner at the exact time." It is the eternal answer of all departments to the whole of humanity. Most children would have acquiesced and wept. Not so little Rowland. He goes on earnestly desiring. Patiently explains to the head of the Department, also perhaps to the Chief of the Staff in the kitchen, his theory of the early commencement of roasting in relation

to larger joints; continues earnestly desiring and at length persuades authority to experiment. In a few weeks the punctuality of dinner ceases to be an abhorred novelty, the authorities no longer declare it impossible, it has come to stay and gradually ceases to be a human desire incapable of realisation and grows itself at length into a piece of hard, unyielding Departmentalism.

If the Post Office officials had heard this story and taken warning from it, it had been the better for them. For here was a little child destined to lead them into strange paths of efficiency or in default to knock their resounding heads together until they ached and echoed.

Rowland Hill's career as schoolmaster, educational inventor of printing machinery and secretary to the Australian Commissioners is an inspiring record of energy and achievement, but his whole life was subordinated to the realisation of his idea of penny postage. It was the humanity of the business, its blessing to the poor, that attracted him and his followers, as well as its enormous importance to commerce. Neither of these features interested the department. To the Chiefs of the Post Office it was an impossibility and a nuisance.

For ten years Hill worked at his schemes of Post Office Reform. He made two discoveries of enormous importance. The first was that economically it mattered not how far you carried a letter, and that therefore postage rates should be irrespective of distance, the second was that postage should be prepaid by adhesive stamps. We who live in an age when these things are common-

place must remember that to Colonel Maberley, the head of the Post Office, and the Treasury officials, who had to be convinced about them, they were blasphemy. But to men in business and to the poor they were tidings of great joy.

In 1836 the world had recognised Rowland Hill as a great reformer but the Pharisees of Whitehall hated and reviled him. "I have never yet been," he writes, "within the walls of any Post Office. I applied for permission to see the working of the London office but was met by a polite refusal."

It was well the answer was polite for Colonel Maberley, when asked, "And what shall I say to this applicant, Sir?" according to Mr. Edmund Yates, who was his clerk, would give the reply, "Say to him? Tell him to go and be damned, my good fellow!" for the Colonel was a selfish, coarse old creature who was utterly immune from the contagion of new ideas.

It is a mystery to me why a Government Department should desire with awkward shame to do good by stealth. Secrecy is a passion among departmentalists. From a human point of view one finds it hard to understand how men really proud of their undertaking should shrink from a desire to exhibit its perfection to the respectful gaze of their fellow-men. Other artists and makers, though showing a modest diffidence about the matter, do upon pressure consent to the display of their work to some who are worthy of the privilege.

It is the more puzzling because it is only the great public Departments who suffer from this costive aversion to publicity. If you visit a great

city like Manchester or Leeds you are invited to go over its gas works or its sewage works and are asked to admire the various Departmental activities carried on in its Town Hall. The Navy on occasion permits visitors to the ships of the fleet, the Army conducts certain manœuvres in public, Law Courts have always been open to the public in this country, and rather to that fact than to anything that is done in them, is due that whole-hearted confidence that the people feel in legal decisions. Our departments are our only public institutions closed to the people who own them and pay for them.

Rowland Hill's triumph came in 1839. The final stages of the battle were fought out in Parliament. The departmentalists were in the last ditch. The Government supported them but they had in the end to give way for, as *The Times* said, "it was the cause of the whole people of the United Kingdom against the small coteries of place-holders in St. Martin's Lane and its dependencies."

Rowland Hill was now asked by the Government to come in to the Treasury for two years at a salary of £500 a year to show the officials how to carry out his scheme. His brother Matthew wrote a letter to him which to those citizens who, to serve their country in time of war entered the sacred circles of Whitehall, must read like an inspired revelation.

"It is quite clear," he writes, "that to insure a fair trial for your plan you will require great powers; that the Ministers will not interfere with you themselves, nor as far as they can prevent it suffer you to be thwarted by others I can readily

believe; but I am not so sure of their power as I am of their good will. You have excited great hostility at the Post Office—that we know as a matter of fact—but it must have been inferred if the fact had not been known. It is not in human nature that the gentlemen at the Post Office should view your plan with friendly eyes. If they are good-natured persons, as I daresay they are, they will forgive you in time; but they have much to overlook. That a stranger should attempt to understand the arcana of our system of postage better than those whose duty it was to attain such knowledge was bad enough; that he should succeed was still worse; but that he should persuade the country and the Parliament that he had succeeded is an offence very difficult to pardon. Now you are called upon to undertake the task of carrying into action through the agency of these gentlemen what they have pronounced preposterous, wild, visionary, absurd, clumsy, and impracticable. They have thus pledged themselves by a distinct prophecy repeated over and over again that the plan cannot succeed. I confess I hold in great awe prophets who may have the means of assisting in the fulfilment of their own predictions."

Rowland Hill in the Treasury was up against an almost impossible task. Colonel Maberley remained the Secretary to the Post Office. The Government raised their offer to £1000 a year for three years, a very important alteration in the eyes of the departments where status is considered almost wholly a matter of salary, and Rowland Hill started on his job. The Colonel

had declared that his scheme was "utterly fallacious, preposterous and unsupported by facts," and he remained at the Post Office to make it so.

Nor did the other departments involved in the reform desire to assist the interloper. The hatred, malice and all uncharitableness that is traditional among rival departments caused Rowland Hill a lot of worry and trouble. It is still a cause of inefficiency. The Pauline idea of being members one of another was in those dark days as strange in Whitehall as it had been at Ephesus. Each Department had its own rights, privileges, creeds and traditions and hugged them and fought for them with the sectarian tenacity of Auld Lichts or Wee Frees.

To a man like Rowland Hill, whose whole life had been spent in working in friendly co-operation with his brothers and friends in honest endeavour to serve others, this atmosphere of petty intrigue and trumpery contest for personal prestige must have been revolting. He stuck to his task, however, and, in spite of difficulties, deliberately put in his way by those whose duty it was to serve him, the public got their stamps more or less regularly.

But each difficulty that Departmentalism prepared for him made his work more laborious and less successful and caused an unthinking public to discredit his scheme. Nor was he now in a position, being a public servant, to unmask the stupidity of his enemies. "Of course," he writes, "I could no longer communicate with the public, my mouth being officially sealed; and I may observe here, that it were well for the public to understand how completely this is the case with

all subordinate officers. Whatever be their views in the proceedings of their department, whatever schemes they may form or adopt for improvement, or on the other hand whatever injustice may be done to them by their official superiors, or whatever charges may be made against them in Parliament, by the public press or otherwise—comment or even statement of facts is forbidden by official rule."

Whilst it is, of course, necessary that discipline should obtain in any business or office, there are so many instances in the history of the Civil Service where this tradition has spelled public disaster, that both the spirit and the letter of it require prayerful consideration, especially by a generation that seems bent on placing its honour, its lives and all public assets at the disposal of Departmentalism.

In 1842 Rowland Hill was defeated and Departmentalism was victorious. His right to complete his own plan was denied to him and it was handed over to those whose reputation was pledged to its failure and who had successfully obtained his expulsion from office. His dismissal seemed to be complete and absolute but it was only the prelude to his returning to his great work free and unfettered from his official opponents who were promoted, pensioned or otherwise provided for. At the moment of his departure he could not foresee this and he writes of his failure with a dignity and truth that will strike a familiar note to many who have suffered similar disappointment. "So long as there is no opportunity of advancing the public benefit, and so long as

the absence of all power relieves me in justice from all responsibility, it is my earnest wish to retire from labours so heavy as those in which I have now for many years been engaged;—to avoid conflicts which though I have not shrunk from them when necessary, have always been repugnant to my feelings and remote from my habit of life:—and if possible to recruit that health which these causes have seriously impaired."

Until 1846 Rowland Hill remained outside the Post Office. The Government ignored him but the public presented him with a testimonial of £13,000. He was then asked to return to the Post Office with a salary of £1200 a year and to be second in command to Colonel Maberley who remained permanent Secretary with command of the staff. For seven years he worked under this disadvantage, but his scheme prospered, though the Colonel delayed every improvement and wasted millions of public money. At length in 1854 the Colonel was shifted by promotion to the Board of Audit and Rowland Hill became sole sceretary. He reigned for ten years with his brother as chief assistant and, to the disgust of the departments and the joy of his fellow-countrymen, improved the Post Office to a position of efficiency and cheapness which was the envy of the world.

His indeed was a noble career and very cheerful to dwell upon in these days when the departments oppress the people and compass them about on every side. You cannot but liken his story to that of the Patriarch Job. In his endeavour to subdue the hippopotamus and "draw out leviathan with a

hook" he suffered many things but his story has a happy ending. Every man gave him a piece of money for his services to humanity, and his honorary degrees, gold medals, and parliamentary grants, parallel Job's camels, oxen and she asses, "when he was restored to a prosperity double that which he enjoyed before." So, too, Rowland Hill died being old and full of days, leaving behind him the fame of a great achievement and a splendid example to his fellow-countrymen.

Rowland Hill saw the dawn of the new era of the Civil Service which began with the famous report of Sir Stafford Northcote and Sir Charles Trevelyan in 1853 though definite action did not follow much before the seventies and then but slowly, and has been continuing slowly ever since.

The old traditions of patronage under which places were given to imbeciles and undesirables have now gone, yet it must be admitted that patronage discovered some able men who might not have taken the trouble or even possessed the skill to cram for a competitive examination. No one can deny that humanity was terribly oppressed by departmentalism in Victorian times. Dickens' story of the Circumlocution Department and the Barnacle Family was true in its day and its tradition still exists in every public office.

You remember when Arthur Clennam wanted to know something from the Circumlocution Department young Barnacle explained to him that he must get leave to memorialise the Department and "if you get it (which you may after a time) that memorial must be entered in that Department, sent to be registered in this Department,

sent back to be signed by that Department, sent back to be countersigned by this Department and then it will begin to be regularly before that Department."

Now this is absolutely true of to-day. Sir Stephen Demetriadi, a citizen whose departmental experiences in the Special Grants Committee of the Ministry of Pensions seem to have been similar to my own, tells us that when the Ministry of Pensions took over the training of disabled men and he had to try and organize the business he found every Ministry in the neighbourhood butting in to prevent him doing the job. So that when he relinquished his task in 1921 he writes that "a disabled man who desires to take up a course in medicine goes first to the Local War Pensions Committee, who refer him to the Local representative of the Ministry of Labour; he completes a number of forms for the Ministry of Labour, who if they consider his application satisfactory refer him to the Board of Education, which supplies him with new forms upon the completion of which if he is lucky his application is approved."

Each of these Ministries will boast in its statistics of these transactions as work done. Thus, in 1926 the Ministry of Pensions triumphantly announces that it has written 5½ millions of letters. How many of these were messages on Gospel lines it would be interesting to discover. But time is of no value in the Departments. The waste of it is, as Sir Stephen says, "a habit of mind." He was asked to revise the regulations for the guidance of Local War Pensions Committees and had the temerity to condense some sixty pages

or more into sixteen. His official colleagues threatened him with disaster but as a matter of fact everything went smoothly. His orders were intelligible, whereas departmental jargon may, if you have the time and patience to analyse it, be scientifically accurate but to the man in the street it might as well be published in Greek as in departmental English.

The following is an instance of the way the department explained to stokers and sea-men what allowances their wives were entitled to.

"It shall be a condition of the award of a supplementary separation allowance that the seaman or marine in respect of whom it is claimed shall have declared in favour of the claimant a weekly allotment from his wages (a) if his full pay and allowances in the nature thereof, including war bonus, do not exceed 22s. 6d. a week, is not less than 1s. 6d. a week, or (b) if his full pay and allowances in the nature thereof exceed 22s. 6d. a week is not less than the weekly excess of such full pay and allowances over 21s., provided that if the excess be not an exact multiple of 6d. it shall be not less than the precise multiple of 6d next below such excess."

Would that the author of that rubbish could have had a heart to heart talk about it with the heroes of the lower deck! Parliamentary draftsmen revel in these absurdities and the sections defining compensation due to injured workmen are even worse than the above. The Rent Restriction Acts are a by-word of obscurity. To understand what their rights are poor people must hire lawyers to interpret these mysteries to them, and

thus incomprehensibility is the parent of waste and costs and unrest. Sir Stephen's regulations, and my own, proved that there was no necessity for this enigmatic periphrasis. In relation to the affairs of the poor it ought to be sternly suppressed. We shall have little hope of real reform until the shallow profundity of Civil Service jargon is replaced by clear, domestic English. Well may Sir Stephen Demetriadi say that "the slogan for the man who would reform the Civil Service is Simplify! Simplify! Simplify!"

But whereas to-day you would probably find some of the younger men of the Service weary of the old traditions and eager for reform, in the Victorian age they were proud of their blind obstructions, fatal indolences, pedantries, stupidities and world-wide jungle of red tape, and there are plenty of "doleful creatures," as Carlyle termed them, who are still under the influence of the old traditions.

It is quite a mistake to suppose that bureaucracy is penitent over its futility in time of war or has learned any lesson from its failures. The same trouble and the same results were equally conspicuous at the time of the Crimean War. Sir Henry Taylor, who had been at the Colonial Office, made no secret of the fact that the departments evaded decision wherever possible and then gave decisions upon superficial examination or deferred questions in the hope that they would solve themselves. A trait of our then departments, which he denounced, was that they were in the habit of conciliating loud and energetic individuals at the expense of such public interests as are

dumb or do not attract attention; by sacrificing everywhere what is feeble and obscure to what is influential and cognisable. This is perfectly true to-day and is at the bottom of much discontent. It is, of course, a blank denial of Gospel teaching.

The blundering wastefulness and friction that took place at the time of the Crimean War created, of course, grave public comment, but after the war was over the departments and their system remained and indeed had many defenders, whilst parliamentarians fought about the pros and cons of patronage and promotion by merit, as though a change of that kind could work miracles. As Sir George Lewis said, the principle of competition cannot alter human nature or make a silk purse out of a sow's ear, and the number of sows' ears is large. What no one seemed to understand was that if your patronage was in right hands and exercised in a right spirit, it must result in promotion by merit, whereas competitive examinations are, for anything beyond a test of general education, in the nature of a lottery. Whenever you come to talk about the social machine you end, if you are in earnest, in discussing the spirit which ought to move it rather than the mechanism by which it moves.

One must admit that a great evil in our Civil Service has been what the Service speaks of as "the barrier," the gulf that separates the sheep from the goats; the administrative grade from the workers of all classes. In the fifties it was thought that it could be bridged over, and though one attempt after another has been made, the

heads of departments have not welcomed the rankers within their caste. You cannot carry these schemes by printing type on buff paper, and they have been largely ignored by those who were directed to carry them out.

Yet all great thinkers have seen the evil of a service in which some are born to work and labour and others are born in the purple. The days when people cared for Civil Service reform are long past: you could not feature a cabinet minister of to-day inspiring popular enthusiasm on such a subject. But far back in 1871, in the cold mists of Blackheath on an autumn afternoon, Mr. Gladstone stood bareheaded, pale and resolute, before an audience of many thousands of dockyard workmen, and announced to them the glad tidings that the Civil Service was henceforth to be a purer and nobler thing than the State had ever known. In glowing words the eloquent old man unfolded his message to the people who sat at his feet. He was going to remove from the Civil Service the reproach that, like the Army, it was "not the property of the nation." All the barriers of nomination, patronage, jobbery and favouritism were to go, and every man in England who could fit his children by education for the Civil Service was to have the chance of sending them to compete for the offices of State.

Gladstone meant every word he said. He believed in the coming of democracy as he believed in the message of the Gospel. Indeed, on occasion they seemed with him to have been part of the same inspiration. But like all ardent spirits, like the Apostles themselves, he expected the coming

of the marvels in his own day. Nevertheless, we know now that that is not what happens. But if we have faith and hope it is not amiss to bear in mind what the Apostle Gladstone said in 1871. For he in his way was a teacher of the Word.

An Anglican parson in Wales used to say to me, "You know indeed, Judge Parry, we must be charitable even to dissenters." And when I think on departmental matters I try to emulate his spirit of charity. People are too apt to take it for granted that inefficiency and departmentalism are synonymous. In my view that is quite untrue, but departmental inefficiency is traditional and, therefore, very difficult to alter. Nothing will be made of our Civil Service unless we can shatter the idols it worships.

Perhaps the biggest and most complacent idol is centralisation. To one whose spiritual home is Manchester, it has always seemed a remarkable thing that the whole of our Civil Service should be packed into a small corner of London of high rateable value. A country that has not the money to pay for a few decent county courts for the use of the people, builds huge palaces in the best part of London and peoples them with third-class clerks.

To my provincial mind it is absurd that, in a business community like ours, scarcely a single Government Department connected with Trade, Public Health, Labour, or any matters that affect the daily life of industry, has any important sub-department in the provinces, or any official on the spot capable of giving any immediate decision on

a matter of local concern. Everything, however trumpery, has to be referred to London.

And there is another draw-back to our departmentalists living continuously in this cockney atmosphere. The Civil Servant who comes from a public school and ancient university is allocated to one of our public offices in a state of complete ignorance of the people whose affairs he has to deal with. He lives in a suburb, he takes his holidays on the continent and he works in a hothouse of traditions. What does he know of England, who only London knows? Decentralisation, and living for a while in a more bracing provincial atmosphere, would create in the younger generation of Civil Servants a healthy aversion to cobwebs. A Civil Servant who has spent a few years in the out-post garrisons of our industrial cities will return to headquarters at Whitehall with a far broader outlook on his duties than he will ever attain in a daily journey in a tube between Hampstead and Charing Cross.

Many years ago I put a scheme before a high official in Whitehall of an ideal education for a Civil Servant. Just as a boy enters school as raw material and is turned out a manufactured article, so when this product enters the University it is again raw material and undergoes further process of manufacture. But when it reaches the Civil Service it is the rawest material you ever beheld and much of it remains raw to the day of its pension. But if the brighter specimens of these young men were put through a machine, which included a sojourn in Manchester, Leeds or South Wales, were they to visit America or France or Germany

and study and make themselves masters of the methods of some public service or industry in a foreign country and come home and preach a gospel of new ideas to Whitehall, what a splendid human product you would have manufactured from your raw material.

My good friend pooh-poohed my scheme as visionary. "There is a good old proverb which you young fellows had best remember," he said sententiously: "A rolling stone gathers no moss."

Going upstairs to bed I remembered I ought to have replied: "There is certainly plenty of moss in Whitehall, but do we want moss?"

Decentralisation is essential to any reform of the Civil Service, and there is no reason why some of the Departments should not have their headquarters in the centres of industry with a liaison office in London. Industry and Health could get on better if, like India and the Colonies, they had large powers of local administration and a small consultant staff at headquarters. But even this staff should be ready to travel and should have learned its business at the outposts and in the field.

Some such system as this would make it easier to introduce the element of competition into departmental work and to delegate to individuals certain duties for which they must be personally responsible. The absence of definite responsibility is the most hopeless feature of departmentalism. The higher officials of the service should be made personally responsible for the success or failure of their departments, and each subordinate should have definite duties and personal responsibility.

This is not only possible but essential in running a business, a regiment, or a ship, and it is perfectly possible in a department. But to do it you must scrape from the bottom of the departments and also the top, not only the barnacles themselves, most of whom are already defunct, but the poisonous traditions they have left behind.

And one of these which they glory in, an abomination in the sight of the Lord but a very present help in time of trouble, is the doctrine of secrecy and anonymity. This doctrine which has, from the dawn of civilisation, been the sacred creed of quackery, superstition and fraud, is the real curse of Departmentalism. If a man has done a thing that is right, or made a thing that is good, why should he fear to show it to his fellow-men? In fact, and human practice, he does not. But if he has broken one or the whole ten of the commandments he naturally does not want the British Empire Advertising Board to broadcast the news. Nearly every swindle that is exposed in our courts is cradled in secrecy, and ninety per cent of the departmental blunders of the Crimean War, and our more recent troubles, might have been avoided if the departments had informed the public what they were doing.

Probably hundreds of departmental individuals could hinder the waste and folly that goes on, but for the traditional etiquette of loyalty to departmental policy. No young lion in the departmental menagerie is encouraged to write a minute to say what he really thinks about what is going on around him. Hans Christian Andersen's story of

The Emperor's New Clothes is paraphrased from day to day in all the departments.

You will remember that some crafty weavers told the Emperor that they could weave him cloth, the colours and patterns of which were altogether out of the common, and the cloth when woven had the peculiar property of being invisible to every man who was either unfit for his office or insufferably stupid. The King was eager to possess such cloth and the rogues received drafts on the Treasury and set up two looms and proceeded to buy silver and gold and put it into their pockets. How the old and ablest ministers visited the looms, and for fear of exposing their folly admired the cloth that did not exist; how the gentlemen in waiting raved about it; how the whole people of the country accepted the myth at the hands of the government, and how the king himself with not a rag of clothing made royal progress through the streets of the city to the admiration of his people, until a little child called out, "He has nothing on!" and the scales fell from their eyes—all this is only a charming satire on the ways of governments and their dupes.

Now all cloth woven to the patterns approved by the mandarins is sacrosanct in the departments. The Commissions and Blue Books, especially those following the conduct of a war, teem with examples of absurd folly. The story of the projected aerial gunnery school at Loch Doon is a classic example. In 1916 the War Office decided to make this school at Loch Doon in Southern Ayrshire. The Loch is about 5 miles by 1½ miles; it is 700 feet above sea level and

its northern end is 4 miles from a railway. Halfway down the lake is a peaty bog about half a mile by a quarter of a mile in area. It was an essential part of the scheme to drain this bog in order to make it serviceable as an aerodrome. Sir George Scott-Moncrieff, then Director of Fortifications, warned the War Office that it was "a very risky measure to attempt," but the Scottish Command engineers and the Air Lords of the War Office insisted on it and in August, 1916, £150,000 was voted and the works started.

Three thousand men, half of whom were German prisoners, did their best to create the impossible. Roads were remade; 2½ miles of railway were pushed towards the Loch; 56 miles of pipe laid to drain the bog, soil spread upon it and grass seed sown lavishly. An electric power-station, sluices to raise the level of the lake, temporary huts, a hospital and a lecture hall, hangars and a seaplane shed, were planned and built, and water works and sewage works were provided for a population of 1,800. The estimate increased to £350,000.

It appeared that climatic conditions made flying impossible on half the days of the year and on many other days low clouds hindered useful instructional flying. It seemed doubtful to the last whether the drainage of the bog would ever provide a place where aeroplanes could safely land, especially in wet weather. In December, 1917, the Air Ministry was constituted. In January, 1918, the heads of it visited Loch Doon and the enterprise was abandoned.

The Select Committee of National Expenditure

writes this mournful epitaph: "Loch Doon and the country around it will soon return to the solitude and silence from which they were roused by the introduction of thousands of men employed over a period of fifteen months at a cost of hundreds and thousands of public money, on an enterprise which was misconceived from the beginning and which even if once begun, ought never to have been continued. Its name will be remembered as the scene of one of the most striking instances of wasted expenditure that our records can show."

Here, I think, the select ones of the Committee are quite wrong in their psychology. Departmentalism remembers nothing and learns nothing, and humanity is too full of sense and optimism to brood over the past follies of its rulers but marches on smiling in faith and hope with its eyes bent on the blue haze of the horizon.

The Committee recommended that in future the War Office should take the advice of the Committee of the Institute of Civil Engineers in the early stages of a matter of this kind and invite their full and free criticism of the scheme. This raises a very interesting question—would it not be possible for the departments, when they are faced with problems with which they are not really equipped to deal, to make greater use of expert lay assistance? In the war the departments were compelled to do it, and when one could persuade them to adopt new methods, the practice had excellent results. Nor must we belittle the difficulties of the heads of departments in times

of emergency. They have not invented the system under which they work. As Sir Stephen Demetriadi puts it, "Faced with a sudden emergency, such as the war produced over and over again, (the departmentalist) had neither the inclination nor the ability to swerve from the beaten track. Were fifty clerks previously employed in doing this work? Is there now ten times the amount of work to be done? Then requisition an additional 450 clerks, take some great hotel in which to house them and do the same thing ten times where it was previously done once." That was the departmental way.

I fancy that in the future, not only in times of emergency but in times of peace, we shall have to solve some of the problems of Departmentalism by inoculating them with the methods of humanity. The departments will have to shed a great many of their permanent second-rate experts and co-opt for the sanction of their schemes the best brains of science, art, and business in the country. This was done in the war and can be and is being done now. Let me hasten to point out that there is plenty of precedent for this suggestion and we know that it works well.

For instance, when a government does not know how to act, it appoints a Departmental or Royal Commission and seeks lay advice. This system wants to be more largely applied to public affairs and will, I believe, work both for economy and efficiency. We have a very ancient and valuable example among us which works in harmony with these ideals. It has existed since 1817, and has never moved to Whitehall but, being connected

with the highest school of City finance, has its habitation in Old Jewry. I refer to the Public Works Loan Board. The Commissioners, including the Chairman and Deputy-Chairman, who are all men of eminence and position, receive no remuneration. They are like the members of a Hospital Board and serve their fellow-men from a sense of duty and the joy of service. There is a small staff, the whole salary list being about £3,000 a year, and last year the Commissioners considered and approved loans of over £10,000,000 for public services.

Now I am not saying that this wonderful example of economic practical business could be adapted to every departmental problem, but it would solve a great many and, indeed, has already spread with advantage to the community. The Development Commissioners, who are presided over by Lord Richard Cavendish and have a number of men of science and business on the Board, fulfil their honorary duties with a discrimination and sympathy with countryside affairs and the small interests of small people, in an admirable way and their work is worthy of far more public appreciation than it receives.

These things convince me that departmentalism need not be hateful in manner and method and unsympathetic to the poor. There is no reason why it should be ruled forever by the ancient traditions of an effete officialism, and the best and brightest of its new men would readily respond to a call to work in harmony with men and women whose daily tasks and experiences have given them an expert knowledge of affairs

that cannot in the nature of things be acquired in an office.

Whether anything will be done to improve the position depends in a large measure upon what the heads of the Treasury determine, for reform must begin at the top. The Civil Service is dominated by Treasury control. This broke down in the war, like the rest of the Services, but it has gathered power into its hands again, and rules supreme. If the ruling caste of the Treasury were to desire reforms they could be made, for they have enormous power. It is, indeed, a true saying that the country is largely governed by Treasury clerks. Of course the best thing that could happen would be that a permanent head of the Treasury should be a man with a genius for reform and an enthusiasm for righteousness.

Several commissions have considered the question of control and suggested that it should be put on a wider basis. Some have thought that the heads of other departments should join the Council, and perhaps laymen should be co-opted. But whatever you may seek to do it is quite clear that in Civil Service affairs the power of the purse will always rule. It is generally admitted that you cannot serve God and Mammon and unless an inspiration from headquarters makes it clear to the servants of the State that those in control are interested in something beyond the purse they control, you cannot expect them to discontinue their ancient creeds and forms of worship.

The Treasury control is really a wonderful institution. It hinders many good works, it is true, but it has a very thorough though

costly system of achieving small economies. From the records of the past it seems comparatively easy to obtain a million or so from the Treasury for a wild-cat venture, but I would defy a master rogue to obtain half a crown from them for the best cause in the world without prolonged and careful inquiry. The Civil Service is practically beyond the arm of the law and one hears a good deal of complaint from their own servants that they are not over well treated. It would be an excellent thing for the Service if there was an independent tribunal before whom people both in and out of the Service could bring their complaints. Minor officials often act wrongly and rather than start an endless and acrimonious correspondence most citizens shrug their shoulders and continue their work in discontent.

There is no doubt that some of the smaller fry who represent the Treasury—though they may and possibly do misrepresent the Treasury in this —have the Judas mind. I am not sure that Judas was not appointed to bear the bag because he was a typical Treasury man with the right Treasury instinct about small sums. It is true St. John calls him a thief, but I see no evidence to support his view. No one in his senses would have allowed St. John to control the finances. The occasion of the difference between them was when Judas asked in language that might have been used in a Treasury minute to a Board of Health, "Why was not this ointment sold for three hundred pence and given to the poor?"

It is a mistake to suppose Judas was alone in his views about this waste. Other disciples mur-

mured at it and thought he was in the right. St. John seems to have been in a minority. Certainly no one else suggests that Judas was a thief. He had a departmental mind. Humanity worried him. He was the man who had to buy a feast when it was wanted and give money to the poor when he was ordered to do so, but his nature rebelled against doing these things. That is probably why they gave him the bag. People are apt to blame the Treasury for their economies because they do not realise the real pain caused to a methodical economical mind like that of Judas Iscariot when he is asked to share in a generous, beautiful, but as he sees it, wasteful and lavish expenditure.

So that when I use the phrase of the Judas mind in relation to the Treasury, I blame humanity and not Departmentalism. For until humanity makes it clear beyond all dispute that it desires its Civil Servants to base their actions on the teaching of the Master, it is no use reviling them for following the ancient Treasury traditions of Judas, which are still highly approved by economic authorities of to-day, and have a greater hold on the bulk of humanity than the message of the Gospel.

The absence of all personal responsibility leads to a great deal of departmental wrong-doing. At all events a judge or a lawyer has a personal duty and responsibility and if he is a man who endeavours to base his actions on Gospel teaching the law does not necessarily forbid it. He can make use of his opportunities. But a corporation or committee having no soul cannot base its

actions on a faith or indeed upon a belief in any special form of right action but merely considers the expediency of its movements.

The expediency that departmentalists base their conduct upon is mainly the expediency of pleasing the Treasury. The young Barnacle longs to bask in the smiles of his employer. Doubtless he would not do unclean tasks for his master if it was a matter of personal responsibility. But a committee represents the lowest common denominator of the honesty and intelligence of its members. And when all its members receive sustenance and advancement from one source it is easy to understand how "Mammon wins his way where Seraphs might despair."

I remember a typical instance of the result of this departmental psychology that was exposed to light in the Courts three years ago. An old farmer of 80 was turned out of his farm by the agricultural authorities because it was badly cultivated. The reason for its bad cultivation was that the country had conscripted his ploughman and the authorities who afterwards destroyed him had sent him a hairdresser to work a tractor and this amateur had turned his land into a displeasing waste of excavations and heaps. The Ministry of Agriculture were apparently responsible for the authority who had ruined the farm and turned out the owner. There seems to have been no dispute about these facts. There was a war on and doubtless their action may very possibly have been lawful though it was certainly not profitable to anyone in its result.

Later on the old man applied to a War Com-

pensation Tribunal, was referred to arbitration under the Corn Production Board, who referred him back to the Compensation Tribunal. After twelve months' interval they decided against him on the ground that his proper remedy was an action against the Ministry of Agriculture. This he brought. The Ministry did not dispute the facts but they pleaded under the Indemnity Act that he was too late in the field. The Lord Chief Justice was powerless. The point taken was good in law. He gave judgment for the Ministry, remarking that "if he were dispensing something else and not law, the result would have been different."

In countries where law does not prevail, landlords who behave in the way the Ministry behaved are shot at dawn or something earlier. Any individual who sought to evade responsibility by such a subterfuge would be a social outcast from decent society. But in the departments, when their servants go back to their palaces of wealth and luxury and relate how justice has been denied to the poor, and how in their Master's interests they have "scummed the bullion-dross," Mammon will smile upon them and mayhap give them buttons to wear, in honour of their toil.

Doubtless if you were to investigate an affair of this kind you would find that no one was responsible for the wrong done. Nevertheless, the law reports prove that, after the fashion of moneylenders and other eager traders, the departments revel in tripping up a foolish citizen with a technical point. The Board of Trade took an objection to the service of a writ which had not been

served on the Archbishop of Canterbury and other ornamental members of the Board. It was a good objection but, as the judge said, "a very annoying and irritating one without any merits." In the same way the Board of Education were found guilty by the Court of "seeking to turn the question put to them into another question so as to evade the point." Lord Justice Farwell was shocked at their moral outlook but took a charitable view of their behaviour, saying, "I cannot believe that a public department such as the Education office can have been guilty of a course which could only be characterised as flagrant misconduct and I prefer to think that they mistook the law."

With great respect to the Lord Justice I fancy that there is some confusion of thought here. The Education Office, in so far as an office can either conduct or misconduct itself, had been guilty of a low trick, but the honourable men who ran the department had not any responsibility for it. They were, of course, all high-souled Christian gentlemen who would have spurned such an action individually. Seeing what the legal staff of the department costs the country, the idea that they mistook the law seems as improbable as it is uncomplimentary. I fancy the real cause of their undignified appearance in Court was that some bright young son of Belial was out to checkmate his opponent in the traditional ways that lead to promotion, but the transaction had not been skilfully veiled and would not stand the light of day.

The whole thing may have been mere bluffing.

A public department will bluff to any extent and an individual rarely dares to "see the hand." Lord Birkenhead refers to this in an action brought by the Post Office where he found that the Postmaster wrote a letter in which he "lays down dogmatically an entirely inaccurate statement of the law and for this statement the Postmaster-General makes himself responsible in language more suitable for the Legislature than for an individual minister." That would, of course, have bluffed out any ordinary citizen and most attorneys. But here the defendant was the Liverpool Corporation. And though it is no less immoral to bluff a corporation than to bluff a poor man, it is an entirely different business risk and may result in disaster to the bluffer.

Of course many of the departments are wholly inaccessible to the law, as they are for legal purposes "The Crown." Here the citizen has no protection from departmental aggression.

To-day even the most conservative citizen is beginning to recognise that, at the rate we are handing over our liberties to the departments, it will be necessary to abolish the archaic notion that the Crown can do no wrong; and that to clothe the employer of a festive driver of an army lorry who knocks you over in the street, with the legal garments of Richard Cœur de Lion, is as foolish an anachronism as it would be to paint a picture of the Civil Service in woad instead of whitewash.

And the departments are aware of their impending doom and in every Bill they tender to parliament they seek semi-judicial powers of their

own. Their ideal is administrative law without its judiciary. Professor Morgan, to whose work I am greatly indebted, suggests that they seek "statutory authority without a Court to exercise it, statutory authority without any equity to temper it." And his considered view in which I humbly concur is that every citizen should be enabled by statute to sue the Crown in the same way and to the same extent and by the same procedure as if the action were an action between subject and subject. The mere fact that departmental happenings may have to be explained in Court has always had a good effect on public morals.

If Civil Servants had a personal responsibility for their actions analogous to those of other citizens, and the atmosphere of secrecy and anonymity in which they now live was replaced by the oxygen of publicity; if, in a word, they were invited to a sane, healthy, business career, and the Civil Service was a service of freedom and responsibility, how much happier it would be for the world and for themselves. But for the present I can see no hope that departmentalism will be able to replace the law courts in administering justice to the people. For our "Common law embodies beliefs that have triumphed in the battle of ideas" and has noble traditions which are not inimical to the message of the Gospel.

CHAPTER IX

DIVORCE

First must the dead letter of Religion own itself dead, and drop piecemeal into the dust, if the living Spirit of Religion, freed from this charnel-house, is to arise on us, newborn of Heaven, and with new healing under its wings.

CARLYLE. *Sartor Resartus.* p. 135.

PART I

THE STORY OF THE LAW OF DIVORCE

THERE is not the least doubt in my mind that the State law of divorce, like any other law, can and ought to be amended upon Gospel principles. But before you can bring your mind to the task you must be convinced that the precepts of the Gospels are, as I have said, teaching and not legislation.

The utter confusion of theologians not only about divorce, but also about many other matters of less import to humanity, is caused by dismally construing the Gospels as though they were Statutes, and degrading their texts to the status of bye-laws, instead of joyfully acknowledging that they contain a declaration of general principles upon which right human action can be successfully based. I do not believe that the Master laid down any law about divorce, or imprisonment for debt, or workmen's compensation, but that in the light of his teaching about conduct we can manage these things better than we do at present.

I know that many think quite otherwise, and though it may be necessary to touch upon their arguments as hindering necessary reforms, this will not be done merely to vex them or to convince them, for the first would be wrong and the second impossible. I agree with a large body of my fellow-citizens that theological contests and difficulties do not as a rule assist us in our conduct of life. English people have never based their views of what is right and wrong "upon tradition or sentiment but upon general Christian principles coupled with common sense and experience of the needs of life." This was the view of the majority of the Divorce Commissioners and I concur in it. Not that the Commissioners' Report is in any way adverse to what may be called the traditional teaching of the Protestant Church of England. Cranmer's *Reformatio Legum Ecclesiasticarum* contains some of the best sense about divorce law reform that I have ever read. Naturally, it does not contain every reform that is required to-day but such reforms as it proposes are manifestly based on Gospel principles and are as sound to-day as they were four hundred years ago.

Cranmer's proposals are moderate, sensible and in harmony with the religious ideas of his day, which seem to have been broader and more rational than those of to-day. Had Edward VI lived a little longer, Cranmer's treatise would have been enacted as the statute law of the country. It is pitiful to think of the four hundred years of misery and injustice under which the citizens of this country have suffered in matters relating to divorce owing to a change of Government in

1553. The Scots did better out of the Reformation and have had a more or less satisfactory divorce law in working order since that date.

Shortly, the proposals that Cranmer put forward were these, and they will be found, I think, to run parallel with the views of the common-sense citizen of to-day. He laid down the command that no husband or wife may abandon the other, of his or her own freewill, and, in order that this might be a practical ideal, he set down the causes for which the Courts were to grant relief. Divorce was allowed for adultery, unless both parties were guilty; desertion; the unduly protracted absence of the husband; or the deadly hostility of the parties. Prolonged ill-treatment of the wife gave her a right to divorce, but even here, as long as there was any hope of improvement, the duty of the ecclesiastical judge was to reason with the husband and make him give bail for good behaviour. Only in the last resort must "she on her part be helped by the remedy of divorce."

Great stress is laid throughout the treatise on the desirability of reconciliation. "Since in matrimony there is the closest possible union and the highest degree of love that can be imagined, we earnestly desire that the innocent party should forgive the guilty and take him back again should there seem to be any reasonable hope of a better way of life; and although this forgiving disposition cannot be learnt from external laws, nevertheless Christian charity may often guide us to it."

Cranmer thought, and I think too, that it

should be part of a divorce judge's duty to exhort and advise the parties to live harmoniously together before proceeding to decree. The practice of conciliation, as I shall show hereafter, is not unknown in other countries, and it is eminently a desirable reform of our law that a procedure of reconciliation should be a condition precedent to the issue of any legal proceedings for a divorce.

There was one form of divorce, however, that Cranmer abhorred and would have no traffic with, and that was The Separation *a mensa et thoro*. What he says upon this important matter is so much in accord with modern thought that it is worth quoting at length.

"It was formerly customary in the case of certain crimes to deprive married people of the right of association at *bed* and *board* though in all other respects their marriage tie remained intact; and since this practice is contrary to the Holy Scriptures, involves the greatest confusion and has introduced an accumulation of evils into matrimony, it is our will that the whole thing be by our authority abolished."

The origin of this sort of divorce, or if you prefer so to call it, separation, was in this wise. In the early history of organized Christianity there was a form of divorce on the basis of nullity which had the precise effect of a modern divorce. The canons prescribed certain prohibited degrees of relationship as being impediments to marriage. This gave rise to a prodigious traffic in divorces, and to decisions which were marvels of ingenuity. As Sir Frederick Pollock and Professor Maitland

say in their history of English Law, "Spouses who had quarrelled began to investigate their pedigrees and were unlucky if they could find no *impedimentum dirimens* which would invalidate their marriage." There are many quaint stories of these divorces, or annulments as some prefer to call them. Bertha Big-foot, a King's daughter, was Queen to Robert the Pious, son of Hugh Capet, who succeeded his father in 996. Being cousins, albeit four times removed, the Church ordered their separation and Gregory V annulled the union. Devoted to each other, they defied the decree for five happy years, but at length succumbed to the "divine wrath" by which they were threatened. Cousinship of this nature was a ready excuse for ecclesiastical policy.

The Council of Trent (1548-1563) first formulated officially the Roman acceptance of divorces from bed and board, or separation orders as we call them. Cranmer and his commission, which was appointed in 1551, condemned separation orders. The Greek Church, the third great organization of official Christianity, had always permitted divorce for causes laid down in an Edict of Theodosius and Valentinian in 449.

The history of divorce, as it appears from time to time set out in Christian ecclesiastical records, is a voluminous and confusing study. It is highly interesting, and I confess to having spent—perhaps some would say wasted—many hours in reading the opinions and arguments of the authorities of the conflicting sects.

The following opinions are all variously held by priests of different Christian organizations.

1. That all marriages are indissoluble.
2. That Christian marriages are indissoluble.
3. That marriage is dissoluble on the ground of adultery only.
4. That marriage is dissoluble on the grounds of (1) adultery or (2) desertion.
5. That marriage is dissoluble on other serious grounds based upon the necessities of human life.

Obviously you cannot accept all these propositions, and for my part I believe the last two opinions are in accord with Gospel teaching. Certain I am, too, that Cranmer interpreted the mind of the Master in his denunciation of the separation order as being contrary to Holy Scripture. He really believed in the holiness of matrimony. His view was that the marriage bond was so sacred in fact, rather than in law, that when circumstances rendered it impossible for the parties to the bond to live together the bond was broken, and that to decree the separation of husband and wife forbidding them to remarry was courting disaster.

To Cranmer and those who thought with him bed and board, or cohabitation, belonged to the essence and substance of matrimony. That husband and wife could be ordered to live apart and still remain married seemed to them a heresy and a contradiction in terms as well as an invitation to immorality.

Bishop Cozens in 1700 speaking in the House of Lords on the Duke of Norfolk's divorce bill put it in his rude Protestant way thus: "The distinction betwixt bed and board and the bond, is new,

never mentioned in the Scripture, and unknown to the ancient church; devised only by the canonists and school men in the Latin church (for the Greek church knows it not) to serve the Pope's turn the better till he got it established in the Council of Trent."

Note that the Bishop hated this form of divorce not so much because it was wrong but because it was papistry. Now to my mind separation though wrong was devised by the Roman Church, which had adopted the idea of a sacrament of indissoluble marriage, as a safety valve and a way out of difficulties for their wealthy and powerful adherents. Well-to-do men and women had been accustomed to obtain nullities of marriage, which were really divorces, on somewhat scandalous lines. The Roman authorities quite rightly wanted to check these abuses. They knew enough about human nature to know that they could not enforce the new idea of indissoluble marriage rigorously, so they adopted the divorce from bed and board as a way out of difficulty.

But from a moral point of view separation orders have proved disastrous and a real blow to the status of marriage. They cast upon the world men and women in the "undefined and dangerous characters of a wife without a husband and a husband without a wife," and this condition leads to further adultery. Permanent separation is condemned by all modern authorities who have experience of its results and whose ideas of right and wrong are not divorced from reason by priestly authority.

"I would not have separation," said Mr. Justice

Bargrave Deane, a most experienced Divorce Court Judge. "It is a living death—that is the way I look on separations. It is wrong altogether. Either they must live together or they must live apart." That is the true common sense of the matter. Permanent separation is the real putting asunder and destruction of the marriage bond. A decree of divorce on the other hand is merely an honest recognition that circumstances have in fact dissolved the bond.

And this has been the actual experience in Scotland where the law allows divorce for desertion. As Lord Salvesen says, "malicious desertion is a much graver violation of the conjugal vow than infidelity because it presupposes no regard whatever for the conjugal obligations. When a man leaves his wife and children after a course of ill-treatment and neglect, because they have become burdensome to him, and disappears abroad leaving them destitute, what is the purpose of decreeing a separation from bed and board? The defaulting husband has done that in fact. What is the objection to granting the innocent wife a divorce with the opportunity of a new and happy union and a renewed family life for herself and her children?" There is, it appears to me, no objection to be urged on the grounds of morality and common sense. The prohibition comes from a priestly doctrine of an indissoluble sacrament of marriage which has no Gospel origin and is of no authority in reformed churches.

And that the status of marriage has not been injured in Scotland by its wiser divorce laws is the opinion of those who have experience and can

speak with authority. Lord Fraser says that "the conjugal relation has stood not less but infinitely more secure and sacred since separations *a mensa et thoro* for adultery which were extremely common under the Popish jurisdiction fell into total disuse."

The immoral consequences of separation orders granted by magistrates to poor people who were unable by reason of their poverty to approach the Divorce Courts, called the attention of many workers among the poor to the necessity of divorce reform and the Divorce Commissioners came to a sound conclusion when they decided that "the remedy of judicial separation is an unnatural and unsatisfactory remedy leading to evil consequences and that it is inadequate in cases where married life has become practically impossible."

Where a law leads to immorality, and lessens the regard for the sanctity of marriage, one would expect that all those who base their views on Gospel authority would join in reform. But here, unfortunately, the mediæval invention of the sacrament of indissoluble marriage comes in, and haunts the mind of man with what is no doubt a very beautiful ideal, but one that has no basis in Gospel teaching or in the facts of sane and wholesome domestic life.

There is no quarrel with the ideal of marriage put forward. The true idea of marriage is beyond doubt the union of a man and a woman which in the interests of themselves and their children and the community should remain an inseparable union during the lives of husband and wife. Why then cannot we all concur in the sacrament of

indissoluble union? The reason is not far to seek. The sacrament is based on a fiction and is found in practice to work evil. It states that which is not, and to decree a legal bond of marriage where marriage in fact no longer exists, is recognised to be bad for the parties to the marriage and their children and the community and to lead to immorality.

It is for this reason that no law reformer can shrink from an inquiry into the origin and working of this sacramental theory, since the Divorce commissioners felt bound to approve of the continuation of separation orders on the ground that they "afford a remedy for Roman Catholics and persons disapproving of divorce."

The sacramental idea of marriage which makes it indissoluble did not exist apparently in the early days of Christian churches. "According to the teaching of mediæval Canon Law the essence of marriage lay in the consent of the parties: Up till the Council of Trent, as is well known, the ecclesiastical ceremony was not recognised as essential to its validity even as between Catholic Christians." St. Jerome had allowed that adultery broke the bond of marriage as well for the woman as the man, but the Council of Trent condemned this idea and it was in this way Christianity became linked with the heathen and barbarous idea of a sacramental indissoluble marriage, an idea which in the history of the world has caused untold cruelty to women and children, and seems to have originated in and been intimately connected with the ideas of slavery and the chattel ownership of women.

Perhaps the most logical and terrible type of the sacrament of indissoluble marriage in actual working to-day is to be found in Hindu custom and Hindu law. Marriage under Hindu law is so sacred a sacrament that it is not only indissoluble in life but the sacramental tie is not dissolved by the happening of death. For that reason the sacrament ordained that upon the death of her husband the widow was to be burned alive with the body of the deceased.

This was the "divine law" and from the days of Diodorus to modern times a religious widow on the death of her husband would obey the priests and, adorned as for a wedding and crowned with myrtle, preceded by her relatives singing hymns in her praise, would ascend the funeral pyre and lie by the side of her husband's corpse to await a horrible death.

Priests in their enthusiasm for a sacrament will shut their eyes to any cruel consequences to others. The Hindu religion preached this sacrament, the Hindu law permitted it, and the Hindu women suffered for it. The sacrament is still of religious authority but the actual practice of burning widows has been abolished since 1829 by the British authorities, not without great difficulty and opposition from the priests and orthodox laity. But Hindu widows are not allowed to-day to remarry; marriage for them is not a personal choice but an eternal sacrifice. Except in forbidding *suttee* as a form of suicide and homicide the Government have not interfered in any other way with the Hindu sacrament of indissoluble marriage.

And there is very little to choose between the Hindu ideal of a wife's duty to-day and that of Western Europe in the middle ages. Both were due to the sacramental indissoluble marriage. The duty of a wife to a husband is laid down in the *Padmapurana* and has the true canonical ring about it.

"There is no other God on earth for a woman than her husband. The most excellent of all the good works she can do is to seek to please him by manifesting perfect obedience to him. Therein should be her sole rule of life.

"Be her husband deformed, aged, infirm, offensive in his manners; let him also be choleric, debauched, immoral, a drunkard, a gambler; let him frequent places of ill-repute, live in open sin with other women, have no affection whatever for his home; let him rave like a lunatic; let him live without honour; let him be blind, deaf, dumb, or crippled, in a word let his defects be what they may, let his wickedness be what it may, a wife should always look upon him as her God, should lavish on him all her attention and care, paying no heed whatsoever to his character and giving him no cause whatsoever for displeasure."

That is the true statement of the position of women in the clutches of one of the oldest and most stringent forms of sacramental indissoluble marriage still functioning in the world. Its results upon the men, women and children it affects may be studied in the terrible pages of *Mother India*, by Katherine Mayo.

The fact is that citizens whose ideal of marriage is a life-long union, and who desire that all their

fellow-citizens shall have a reasonable chance of happy family life, and are eager to protect women and children from misery and evil, must admit that organized priesthoods with mystic interpretations of "divine will" have never done much to assist these aims.

In this country marriage is a civil contract and the marriage laws apply to citizens of all religions. No law of divorce is compulsory upon anyone and the State is bound to regulate marriage with a view to social expediency including the cultivation of a high ideal of life and character and especially the welfare of women and children.

If England had listened to the wisdom of Cranmer, we might have achieved as much as Scotland did four hundred years ago. Unfortunately we preferred to muddle along without any State divorce procedure, and the condition of morality and the status of women remained behind other civilisations until the latter half of the last century. There were Acts of Parliament to divorce rich people, and the rest separated and formed irregular unions or committed bigamy.

It was a judge who awakened the world to the iniquity of it all, and he did it by a jest. There are some funny things said in the High Court to-day, but they do not seem to be designed to push the world along as this witty speech did. It was Mr. Justice Maule—a sly dog, the hero of many a good circuit story—it was Maule J. in a bigamy case, *Regina v. Thomas Hall,* tried at Warwick in 1845, who woke up the country to the fact that there was a divorce problem, and that it wanted solving.

Hall was a labouring man convicted of bigamy and called up for sentence. Maule, in passing sentence said, that it did appear that he had been hardly used.

"I have indeed, my Lord," called out poor Hall, "it is very hard."

"Hold your tongue, Hall," quoth the judge, "you must not interrupt me. What I say is the law of the land which you in common with everyone else are bound to obey. No doubt it is very hard for you to have been so used and not to be able to have another wife to live with you when Mary Ann had gone away to live with another man, having first robbed you; but such is the law. The law in fact is the same to you as it is to the rich man; it is the same to the low and poor as it is to the mighty rich and through it you alone can hope to obtain effectual and sufficient relief, and what the rich man would have done you should have done also, you should have followed the same course."

"But I had no money, my Lord," exclaimed Hall.

"Hold your tongue," rejoined the judge, "you should not interrupt me, especially when I am only speaking to inform you as to what you should have done and for your good. Yes, Hall, you should have brought an action and obtained damages, which probably the other side would not have been able to pay, in which case you would have had to pay your own costs perhaps a hundred or a hundred and fifty pounds."

"Oh, Lord!" ejaculated the prisoner.

"Don't interrupt me, Hall," said Maule, "but

attend. But even then you must not have married again. No, you should have gone to the Ecclesiastical Court and then to the House of Lords, where, having proved that all these preliminary matters had been complied with, you would then have been able to marry again! It is very true, Hall, you might say, 'Where was all the money to come from to pay for all this?' And certainly that was a serious question as the expenses might amount to five or six hundred pounds while you had not as many pence."

"As I hope to be saved, I have not a penny—I am only a poor man."

"Well, don't interrupt me; that may be so, but that will not exempt you from paying the penalty for the felony you have undoubtedly committed. I should have been disposed to have treated the matter more lightly if you had told Maria the real state of the case and said, 'I'll marry you if you choose to take your chance and risk it,' but this you have not done."

And so the judge gave Hall three months or, as some say, four. But that was because he had not told Maria all about it. And where the parties commit bigamy out of sheer respectability and a desire to placate Mrs. Grundy and have some marriage lines in a teapot on the mantelpiece to show the lady who lives next door, the judges, provided there is no deception, wisely treat the offence as something far less deserving of imprisonment than non-payment of rates. Why the police prosecute in these cases the chief constable only knows.

And the scorn and irony that Maule poured

on the then existing law of divorce roused the public conscience, and there was a Royal Commission in 1850 and a Divorce Act in 1857, and the result was the Divorce Court as we know it, an excellent tribunal for the matrimonial affairs of the well-to-do but one that is not yet adapted to the needs of the poor.

The Victorian Divorce Court was not an institution for any State to be proud of. In the first place it catered only for well-to-do people. In order that the middle classes should not be tempted to endeavour to obtain a hearing from its judges it never sat out of London. Its Bar was a small select trade union and the idea was spread abroad that the law of divorce was of a mysterious and difficult character that could only be handled by experts.

Nothing of course was further from the truth and indeed when any *cause célèbre* took place the leaders of the Common Law Bar were called in to take charge of the case and the trade union experts retired to the back benches. But until quite recently, when Judges of Assize were permitted to try divorce cases in certain Counties, the Divorce Court was a hole and corner business in London. I fancy it inherited this exclusiveness from Doctors' Commons, and certainly that ancient and absurd official, the King's Proctor, who is still with us, is a remnant and survival of the past and, but for his unfortunate propensities, might be worth retaining as a genuine and interesting antique.

It is curious how the dead hand of clericalism continues to hamper legal reform. How many

could say off-hand why the King has a Proctor and why the State employs him as a legal Paul Pry to poke his nose into unhappy people's affairs? Why does this ancient juridical ghost of bygone ages still haunt our Courts? Steerforth, you will remember, explained to young Copperfield all about proctors who in his day were monkish attorneys living in a faded Court called Doctors' Commons, a lazy old nook near St. Paul's Churchyard. Even when Charles Dickens wrote about them, he thought with reason that "a proctor was a functionary whose existence in the natural course of things should have terminated about two hundred years ago."

From the earliest days the King had a Proctor of his own, and I suppose he looked after the divorce affairs of Henry VIII, but in most reigns the post must have been a sinecure. Why he was not abolished with all the other doctors and proctors I cannot say. Nor do I understand that to-day he has any official duties to perform for the Sovereign. At the present he is a Treasury Solicitor with a department and a staff. His unsavoury duty is to prevent people obtaining a divorce by collusion, and he has to investigate all the ill-natured gossip of busybodies and malicious folk whose occupation in life is to pry into their neighbours' affairs. A proctor should according to the *Angliæ Notitiæ*, 1687, wear "black robes and hoods lined with white fur." The only King's Proctor I ever knew, a very kind-hearted gentleman who exercised his powers with great discretion, told me that he had no such costume in the office.

In official almanacks and similar publications I cannot find what the King's Proctor costs the State. Dickens thought he was a costly and unnecessary burden on the taxpayer. Maybe he and his staff do their work for the love of the thing but I fancy they are paid. I understand that when a King's Proctor appears by Counsel he asks for his costs. I know of no other country that keeps an official to meddle with and intervene in the decrees of its Courts. The Scots, a domestic, virtuous and thrifty people, find no use for such an official in their divorce system which has long been a standing example to this country by reason of its humanity and common sense.

Lord Desart who held the office for fourteen years said, "that I have felt over and over again, at any rate in a considerable number of cases, that my intervention has done more harm than good." He seemed to think that no great evil would come about if the office were abolished. Mr. Freke Palmer, a solicitor of great experience in divorce cases, told the Commission that the sum total of the King's Proctor's success was "the propagation of irregular unions, adultery and prostitution."

And if you think it out that must inevitably be so. Here is an instance of what happens. A woman tied to an unmitigated scoundrel, who lived on her work and earnings, tried to obtain a divorce. She got her decree nisi. She was sought in marriage by a respectable man, who knew her story and her past. Some mischievous neighbour also knew her past and sent her story to the King's Proctor. It was his duty to bring it before the

Court. She could not deny misconduct. Her decree was rescinded. She remained legally tied to a blackguard. However, she and her friend decided to live together though the law prevented their marriage.

The clericalism that cherishes such social results amazes me. But why should any sane body of citizens support a departmental official to assist in the shipwreck of human lives? If humanity and common decency do not prompt the abolition of such evil deeds a sense of economy might move us nowadays to destroy the department of this monkish attorney who has long outstayed his welcome in our midst.

For in spite of his existence there was never any difficulty in the Victorian Divorce Court for two wealthy people to obtain a divorce by consent and collusion. All that was required was two firms of solicitors of the highest eminence and respectability and a reasonable degree of reticence on the part of their clients. I can hardly suppose that the go-as-you-please methods of divorce were unknown to the judges or indeed to anyone who moved in ordinary society, but no protest came from them or from the clerical guardians of society's morals.

The method was simple. Mr. and Mrs. A. having agreed to part, Mr. A. deserted his wife. Mrs. A. then asked him to return and he refused. She petitioned for restitution of conjugal rights. Order made to Mr. A. to return in fourteen days. Mr. A. now writes and says he will not return and adds that he is staying with another lady and encloses hotel bill for use of Mrs. A.'s solicitors.

Undefended divorce case heard and decree made. Nowadays Mr. A.'s adultery alone would be sufficient and this cheapens the procedure by cutting out the costs of the restitution order.

All this has long been common form, but the Courts insisted that it should be done with every appearance of reality, and on occasion have criticised the evidence of the husband's adultery. Naturally there were many men who desired a divorce, or to release their wife from the tie of marriage who did not care to go through this degrading pantomime. A member of Parliament having obtained a divorce in this way and married again wrote to the papers describing his procedure and complaining that the law necessitated that he should take part in such a farce and pretend to commit an act that in fact he had not committed, but I do not remember that the Courts even admonished him for his deception.

Mr. A. P. Herbert among his *Misleading Cases* reports in *Punch* the case of *Pratt v. Pratt* in which a learned counsel who is about to leave the Bar tells a startled Court the real truth about these things. "Mrs. Pratt," his client, he says, "is really quite a decent little woman. In fact, everybody in the case is thoroughly decent, including your lordship, if I may say so, and it seems to me a great pity that all these decent people should be put to all this trouble and expense and publicity, when the whole thing might easily be done in two minutes at a registry office or through one of the big stores. On the other hand, of course, I have to live; and you have to live, so we mustn't complain."

Many a true word is allowed to be spoken in jest that might be construed as contempt of court if spoken pompously.

All these scandals of the Victorian Divorce Court had been adversely commented on for many years prior to this century and dissatisfaction was openly expressed with our divorce procedure. The Government of the day in 1909, being pressed to deal with the matter, took refuge from their own want of judgment and energy in the constitutional asylum of a Royal Commission.

Part II

THE ROYAL COMMISSION AND AFTER

When the Royal Commission was appointed in 1909 I pointed out that it was really a very shabby method of treating the acknowledged grievances of the poor. With a Government that had a mind of their own on the subject and the fear of God in their hearts rather than the fear of priests and the votes they could command, there was nothing to inquire about. Departmental officials familiar with existing statutes and civil and ecclesiastical histories, and the proposals of social reformers, could have formulated a sound scheme of local divorce courts with a sensible divorce law to administer.

To put the plain fact in the language of the man in the street, the Government of that day funked a quarrel with the organized priesthoods, and succeeding Governments have continued in

the same condition of hereditary funk. There is nothing novel about it. It is the old contest between the Gospel and the creeds.

And I will say this for the Commission, that in 1912 they produced a report with vast volumes of evidence and appendices, which is a monumental storehouse of facts, history and learning about divorce, and is incidentally a fascinating manual of ecclesiastical zoography.

The result of the labours of the Commission as evidenced by the Majority Report was that what Thomas Cranmer was ready to do in 1550 they thought might safely be attempted in 1912. But clericalism was the enemy. The Archbishop of York whilst not proposing to go back on the Divorce Act of 1857, was adverse to reform. He thought the horrible system of separation orders without a right to remarry "probably fulfils its purpose very well." Curiously enough, the clerical minority concurred in the recommendation of their brethren that whatever grounds were permitted to a husband for obtaining a divorce, should be available for a wife in a suit against her husband. This is an interesting concession by devotees of sacramentalism to equity and justice, and historically it shows a great advance of clericalism in its attitude towards the rights of women.

But the minority representatives were evidently very alert to what they called public opinion. On several occasions they spoke of the absence of "public demand for divorce" as though if there were a proved public demand that would make the reform not only expedient but necessary.

There was want of originality among these

ecclesiastical reactionaries, and they could only fall back upon time-worn methods of opposing the arguments of the reformers. Now there are two ways in which those who are satisfied that the world is the best of all possible worlds meet proposals for reform. If they are backed up by popular clamour and agitation they say with some show of reason that it would never do to give way to threats of violence. If, on the other hand, the campaign for reform is conducted by mannerly argument, it is commonly said that there is no demand for a change. Comfortable clerical persons are never tired of telling you that there is really no demand from the poorer classes for any reform of the divorce laws.

True, people do not go out in the streets and break the windows of Cabinet Ministers, or make themselves politically disagreeable after the fashion of the middle classes who have grievances real or imaginary. But anyone whose advice is sought by the poor in their troubles knows that the demand for divorce exists, if it were of any use uttering it aloud to our smug and respectable rulers. Of course, the demand, or no demand, is immaterial to anyone who has grasped the fact that it is a principle of elementary justice that the poor should have the same audience and remedies in all our Courts as the rich.

The real demand for divorce is to be found in the circumstances of the lives of the poor. I propose to set down a few typical cases drawn in every instance from public published records.

Jane married Fred when twenty-two years of age. Soon after the marriage he began to ill-treat

her and would not work. Jane's parents helped them in business. Fred continued his ill ways and at length gave Jane a beating. Jane took out a summons, but would not face the Court, and forgave Fred. After five years of unhappy married life Jane went back to her parents taking her two children, Fred agreeing to pay her three shillings a week. At the end of nine months he ceased to send her any money and disappeared. For seven years Jane lived with her parents until they died. After their death she found it a great struggle to live and pay the rent. Charles now comes on the scene, he takes lodgings at Jane's house and pays the rent. Ultimately Charles and Jane live happily together and there are two children of the union. Charles provides for Fred's children as well as his own. Charles and Jane would like to marry for their own sake and for their children's. In so far as there is any sin or immorality in this story the promoters of it and the sharers in it are those who stand in the path of divorce reform.

Here is another typical case. George marries Mary, their ages are eighteen and seventeen. Soon after marriage Mary—who comes of an immoral family—starts drinking and going about with other men. Ultimately she deserts George and becomes pregnant by another man and is confined in hospital. The guardians proceed against George for the expenses of the confinement, but he is able to prove to their satisfaction that he is not the father of the child. Mary then disappears to further infidelities and George goes back to live with his mother. Later on Anna appears on

the scene and George and Anna have now a comfortable home and healthy infant. "They think a deal of it and wish it could be legitimate."

So, no doubt, do Charles and Jane and many other poor parents in like case. The law says that these people are entitled to have a divorce, but unfortunately the authorities erected the only Divorce Court in a corner of London inaccessible to these poor provincials, and they still make the costs and fees, which are necessary to divorce suits tried at County Assizes, so expensive, that there is little possibility of Charles and George, and Jane and Anna, and their little infants having the blessings of legal and holy matrimony, because they have not the cash to purchase the luxury. And when it is suggested that divorce might be cheapened, and made available for these poor citizens, archbishops shake their heads, and legal bigwigs, with their eye on the fees and the costs, hold up their hands in amazement. There is no demand for divorce, says the Minority Report, and its worthy authors point out, with cynical contempt for the working classes, that they have got a system of separation orders which is really all they require.

Now if there is one thing which the evidence before the Commission puts beyond doubt it is that the law in relation to separation orders induces, invites, and causes immorality in the poor. Cranmer, you remember, knew all about that, and looked on separation without the right to remarry as an unclean thing. But since the sorrows of the poor in their marriage shipwrecks were so manifest, and the divorce Court was closed to them,

systems of magisterial separation orders, cheap permanent divorces, without the right to marry again, became the order of the day.

At the time of the Divorce Report there were some six thousand of these decrees made annually. The evidence is overwhelming as to the evils that spring from these orders. As Mrs. Tennant said: "I believe that separation orders, the general alternative offered to divorce, work badly in working-class houses, and on the whole make for an increase rather than a diminution of immorality. We have to consider housing conditions and economic circumstances which often do not make for clean or wholesome ways of life, and where the relief offered by separation is not only inadequate but positively mischievous."

Put in plainer terms by other witnesses, a labouring man deserted by his wife, if he has to find a home for his children, has to find a woman to keep house for him; a woman of the same class in a similar position has to pay a rent, which necessitates the taking in of a lodger. Human nature being what it is, it seemed superfluous to appoint a Royal Commission of trusty and well-beloved ones to tell us what would happen. This is the system that the Archbishops of York thinks "probably fulfils its purpose fairly well."

Of course, it all depends what its purpose may be. If it is its purpose to stand in the way of cheap divorce and the rights of the poor to have the same chance of rescue from a shipwrecked marriage that the rich possess, all is indeed well. But if the object of the law is to bring to those

who are weary and in misery, some hope of a new life and a new home, where children can be born without shame, and the parties can live in accordance with the wishes of themselves and their neighbours, then with all respect to the Primate of England the system is probably fulfilling its purpose very damnably.

What is perhaps most exasperating about the Minority Report, is not so much the ignorance of human nature which it displays, as the self-sufficiency of its utterance. These reverend and learned men are not as other men are, and they warn common citizens like myself that "we must always be on our guard lest the sympathy, which cases of individual hardship naturally and rightly arouse, should tend to narrow our outlook, and prevent a comprehensive view of the whole situation as it affects the welfare of the community."

One cannot consider such nonsense seriously. Two parallel passages to this remarkable passage leap to memory.

"Mr. Pecksniff said grace: a short and pious grace, invoking a blessing on the appetites of those present, and committing all persons who had nothing to eat, to the care of Providence."

And again:

> "The time has come," the Walrus said,
> "To talk of many things:
> Of shoes—and ships—and sealing wax—
> Of cabbages—and kings—
> And why the sea is boiling hot—
> And whether pigs have wings."

Truly the Walrus was very ready to take a "com-

prehensive view of the whole situation" without regard to the woes of his victims.

But where in the Gospel did His Grace discover a message warning us to restrain our sympathy for individual cases? Are we not always being called upon to remember our individual duty to our individual neighbour? Did The Master ever refuse to act upon his sympathy for individual cases? Was not Lazarus an individual case? Was not the woman who was a sinner an individual case? Is not the whole history of the life of the Master a record of his dealing with the afflictions and sorrows of individual cases by healing their bodies and restoring peace to their souls? We know that the Priest and Levite did not allow any sympathy to narrow their outlook, and went on their way with a thoroughly comprehensive view of the whole situation; but we know that the Master condemned them.

But even if you believe in the sacramental indissoluble marriage myth of the Hindus or the more recent myth of some modern Christians, it becomes a question, for you and every citizen to consider, how far you have a right to impose the *suttee* of actual death, or separation without divorce, which Mr. Justice Bargrave Deane described as a "living death," not only upon women of your own faith, but upon English men and women who have no belief that these *suttees* are the "divine will," but have a very lively belief that both of them are nearly related to ancient forms of devil worship.

And the Divorce Commissioners wisely observed that not only were they concerned about

what members of Christian Churches were taught to approve, but that they were bound to consider the interests of that far larger body of Christian and non-Christian citizens who are in no way interested in the various selfish opposing theological doctrines detailed by the numerous sectarian priests who gave evidence before them.

There never has been any general consensus of Christian opinion upon divorce. The Gospel contains no legislation upon the matter and we can only deal with it, as I propose all other laws should be dealt with, by amending it in the Gospel spirit of charity, healing, and mercy; that spirit which history teaches us has raised the tone of human society from a degradation of heathenism, abolished much of the cruel sacrifice of human life, ameliorated the subjection and dependence of women, abolished the neglect and exposure of little children, and destroyed the hateful institutions of polygamy and slavery, in spite of powerful priestly defenders who asserted that these things were the divine will of God.

The suggestions of the Divorce Commissioners were very moderate. They recommended as grounds for dissolving marriage:

1. Adultery of either party to the marriage.
2. Wilful desertion for three years or upwards.
3. Cruelty.
4. Incurable insanity after 5 years confinement.
5. Incurable habitual drunkenness.
6. Imprisonment under commuted death sentence.

This was fifteen years ago, and at present little

has been done to carry out these moderate and much-needed reforms. A clause was inserted in a Judicature Act of 1925 enabling a wife to obtain a divorce for her husband's adultery, and divorce cases are now triable in several Assize Towns, and that is the sum total of result from the splendid labours of the Commissioners. In 1920 Lord Buckmaster, who has been a good friend to the victims of our matrimonial laws, prepared a bill to carry out the Divorce Commissioners' proposals. The Archbishop of York objected to a second reading. In spite of this it passed the Lords but made no further progress.

It appears that the members of the House of Lords have less fear of episcopal censure than the members of the House of Commons. A man who votes for reform of Divorce is marked down for destruction by the organized priesthoods and the women whose votes they direct. You may give a woman a vote, but that will not for years to come effect her mentality when the "divine will" is directing her. Divorce reform, like many social reforms of the past, will have to contend against this universal trouble. It exists in all communities. The horrors of the Hindu marriage laws cannot be mitigated for the same reason and their priests urge that there is no demand for reform.

A Brahman member of the Legislative Assembly in 1925 cries out in passionate eloquence for his sacramental ideal of marriage much as a Catholic in Western Europe would do to-day in opposition to divorce reform.

"The tradition of womanhood in our country," says our Brahman orator, "is unapproached by

the tradition of womanhood in any other country. . . . To the Brahman girl-wife the husband is a greater, truer, dearer benefactor than all the social reformers bundled together! What right have you to interfere with this ancient noble tradition of ours regarding the sanctity of wedlock?"

And whilst these sacramental ideals of marriage prevail, the recording angel must continue his task of filling his volumes with the foul crimes and wrongdoing to which they give rise and the consequent degradation of women and children that history proves and experience teaches have always been their inevitable sequel.

And though, of course, it is only fair to the higher ecclesiastical priests and lawyers to remember that they never meet Fred and Jane and George and Anna in real life, and know nothing about the trials and troubles of their lives at first hand, yet one would think they might have sufficient imagination to picture the misery of women and children deserted by a drunken, insane or criminal husband and haunted by the fear and terror of his possible return, and the knowledge that no new home or future family life is ever possible for them.

As Mr. Justice Bargrave Deane said, "this question of divorce is more a question for the poor than the rich. The rich have their home and their comforts and their friends." It is quite a mistake, too, to suppose, as many seem to do, that the standard of morality or the etiquette of decent matrimonial conduct, is stricter among the rich than among the poor. The working classes have no leisure for flirtations and philandering.

The behaviour of a fast set in a wealthy country house—which is generally more vulgar than really naughty—would probably scandalise the dwellers in a back street. But what the learned judge wished to emphasise was that the consequences of ill-conduct in a husband or wife are far more serious in the everyday life of the cottage than in that of the mansion. Here he is undoubtedly right.

What, for instance, can be more terrible than the effect of persistent drunkenness on the married life of the poor? Alfred and Anna have two children. The man earns thirty-two shillings and sixpence a week when in full work and is a thoroughly decent and respectable man. His wife is an inebriate. She pawns everything for drink and neglects her children. Her husband obtains a separation order, but after three years Anna promised reform, and Alfred, like the good fellow he was, took her back. Unfortunately in two months she was as bad as ever, and furniture, bedding, clothes, all the household goods disappear to the pawnshop. The children are reported upon by the school authorities. The parents are prosecuted for neglect, and on Anna agreeing to go to an inebriates' home for twelve months the bench postpone sentence. When she comes out she is a wreck, suffering from alcoholic neuritis which is leading to paralysis. During her absence Alfred has had to pay seven and six a week for her maintenance. He now allows her five shillings a week and she lives with her sister. He is on short time earning twenty-six shillings a week. The children are without mother, the home is

without a woman's care and influence, and his income is rendered insufficient to provide the necessaries of life.

Here is another picture—John married Catherine in 1896. There is one child. When the infant was nine months old, Catherine was forced to leave her husband on account of his drunken habits. The child went to its grandmother and Catherine went to service for seven years. After that time she met Charles, a widower, with one child. Being a brave and sensible woman she went to live with him as his wife. They have two children of their own now, one is three years old and the other six months. They have a good home and are very happy, and would like to be married if the law allowed it.

Now, all that organized religion has to tell us about these cases is that marriages are made in heaven and that heaven having once made these two utter messes of human affairs, it is impious for human hands and minds to try and mitigate the evil for which heaven is responsible. I wish those for whom these old-world blasphemies have merely a folk-lore interest, would leave this so-called religion mumbling in its outer darkness, and apply their practical minds to so reforming the law that the lives of Alfred and Anna and Catherine and Charles and their innocent babies, and hundreds of other good men and women, and innocent children, might no longer have to live in this civilised country under any legal disability or under any social shadow of ignominy or shame. In practice these folk very often do marry again without the blessing of Church or State, as in

the last-cited case, and live useful and virtuous lives, bringing up happy children in good homes. The law should assist such citizens in the interest of the State, for the community want good homes and healthy children leading happy lives. And those who forbid these things are not teachers of the Gospel.

The recommendation of the Majority Commission in this matter is a very moderate one. It is that habitual drunkenness found incurable after three years from a first order of separation should be a ground for divorce. This, coupled with divorce for cruelty or desertion for three years and upwards, would certainly cover some of the sadder cases that were brought to the notice of the Commissioners.

The right of the State to refuse divorce in the case of the insanity of a party to a marriage seems hardly arguable. Here is one of the many sad stories. Norah married a soldier twenty years ago. Fourteen years ago he was taken to an asylum, where he still is, and Norah applied for relief. She was offered scrubbing work at the workhouse from 7 a.m. to 6 p.m. at nine shillings a week and some bread, or two-and-six a week and six pounds of bread, with liberty to take in two lodgers. Norah, to be with her children, chose the latter. John was one of the lodgers. He found his way to Norah's heart by buying presents of boots and clothing for the children. And so Norah and John became man and wife, save in so far as the law refused them that status. As Norah told a lady visitor, "I suppose you think it was wrong for me to drift into our present way of living,

but it was such a struggle and he was so good to us. I have never been killed with wages, but we are as comfortable as we can be. I often wish we were free to marry, because we do not like our children being illegitimate, and people look down on a woman so, if she lives as I am doing."

In this matter it is cheering to know that even the Archbishop and his learned adherents were prepared to make some small concession in cases where insanity manifests itself within six months of marriage, but they have no message of hope for Norah. What the sacramental difference in principle may be between the cases of a mad husband who has been married for six months, and a madder husband who has been married for six years, the learned ones do not inform us; but we welcome any sign of ecclesiastical charity toward these poor unfortunates.

It is quite untrue as many clerical opponents of divorce reform are hardy enough to assert that extended facilities for divorce lead to greater laxity of morality. The "preponderating voice of history and experience," to use their own phrase, is all the other way. Domestic morality in the Courts and Society of all grades in the times of James I, Charles II and the Georges was certainly no higher than it is to-day.

The wise men of the past do not support this glib ecclesiastical delusion. With what cautious tact does Montaigne reprove the priests of his day who preached, with less excuse than our moderns, the old heathen sacrament of marriage. "We have thought," he writes, "to tie the nuptial knot of

our marriages more fast and firm by having taken away all means of dissolving it; but the knot of the will and affection is so much the more slackened and made loose, by how much that of constraint is drawn closer; and on the contrary, that which kept the marriages at Rome so long in honour and inviolate, was the liberty every one who so desired had to break them; they kept their wives the better because they might part with them if they would; and in the full liberty of divorce, five hundred years and more passed away before anyone made use on't."

The idea that a more reasonable system of divorce will lead to a wholesale system of divorces is an absurd folly, a bogey used by ignorant but honest clericals to frighten good people who rather enjoy being scared to death. The fat boys of sociology love to make their victims' flesh creep, and when they speak of divorce reform constantly suggest that human nature tends to immorality in matrimonial affairs. As a matter of fact human beings naturally prefer marriage and married life where it is at all a successful institution to divorce and divorced life. This is wonderfully illustrated in Belgium where, as M. Henri Mesnil, the French avocat, points out, divorce law "as provided for by the Code Napoleon has remained in force down to the present day; in spite of the long predominance of the Catholic party, dissolution of marriage by mutual consent is still possible in that country. I might say that although possible it is a very rare thing. I think only one case of divorce by mutual consent will be found amongst four hundred cases in Belgium."

Here we have the results of a hundred years' experience of a European country not unlike our own. It bears out exactly what one would expect.

But logic and experience are of no avail against bigotry and superstition. Too much time has been wasted, too much consideration has been shown, to the theologian. The Commissioners were God-fearing English citizens and their suggested reforms were based on Gospel principles and should without further delay in the interests of humanity be placed upon our Statute Book.

As Lord Birkenhead has said, the condition of our divorce laws is "a great blot on our civilization." It is no excuse to plead the sacrament, for it has no authority in the Gospel. And the basis of our law was well stated by Selden when he said, "Marriage is nothing but a civil contract. 'Tis true 'tis ordinance of God: so is every other contract: God commands me to keep it when I have made it." Worthy John Selden did not mean by that that it was to be kept for ever and in all circumstances, but that it was to be kept until such time as the law released the parties from it in the same way as every other civil contract. Nothing is more true and necessary to be repeated in these days than the citizen aspect of marriage law. Whatever creeds different religious men and women wish to observe they are free to follow. But the marriage law is a question of citizenship for citizens to settle for themselves.

It is therefore satisfactory to remember that Englishmen base their views, not upon ecclesiastical tradition or sentiment, but upon general

Christian principles coupled with common-sense and experience of the needs of human life.

This was the conclusion of the men and women who worked on this Commission which still cries out for Parliamentary time and attention. They have told us "that there is necessity for reform in this country, both in procedure and in law, if the serious grievances which at present exist are to be removed, and if opportunities of obtaining justice are to be within the reach of the poorer classes. So far from such reforms as we recommend tending to lower the standard of morality and regard for the sanctity of the marriage tie, we consider that reform is necessary in the interest of morality, as well as in the interest of justice; and in the general interests of society and the State."

When shall we find time to ease these heavy burdens of the poor and let the oppressed go free?

CHAPTER X

JUSTICE AND HUMANITY

Once (says an Author; where I need not say)
Two Trav'lers found an Oyster in their way;
Both fierce, both hungry; the dispute grew strong,
While Scale in hand Dame *Justice* past along.
Before her each with clamour pleads the Laws,
Explain'd the matter, and would win the cause.
Dame *Justice* weighing long the doubtful Right,
Takes, opens, swallows it before their sight.
The cause of strife remov'd so rarely well,
"There, take" (says *Justice*) "take ye each a *Shell*.
We thrive at *Westminster* on Fools like you:
'Twas a fat Oyster—Live in peace—Adieu."

POPE. *Verbatim from Boileau.*

WE have seen how the poor have been treated in our Courts and we have seen how they have been dealt with by bureaucracy. The departments point to the costs and delays of the law and advertise to humanity that they can deliver better goods at a cheaper rate. Simple humanity, the mere man in the street, is caught by the lure. But when he discovers the worth of departmental promises he rushes to the law for protection and there finds a hostile, unscrupulous litigant fighting him tooth and nail from Court to Court, championed by luxuriant and accomplished advocates hired out of his own income tax. The judges condemn the practices of the departments, but the despoiled citizen wishes he could live in a neutral land where the departments cease from troubling and the lawyers have entered into their long last vacation.

And though there are pessimists who fear, and

anarchists who desire, that revolution will sweep away both law courts and departments and with them wipe out our somewhat elementary state of civilisation, I think myself that if humanity puts heart into the lawyers, and insists upon their translating their ideals into action, it is far more likely to obtain justice in Courts than from the Departments. I feel as I write the words down that I am only paraphrasing the words of the Inimitable. Looking at the record of the law and the departments, how can I expect the man in the street to recollect that the law is his friend and that "Codlin's the friend not Short. Short's very well as far as he goes, but the real friend is Codlin —not Short?"

I am convinced that if, in matters relating to the poor, you scrap the law courts altogether and refer them to unrestricted departmentalism you are heading for trouble. There is already a warfare going on between the law and the departments and like all serious warfare it is a clash of ideals. The Judges in our Courts worship the goddess of justice, the grand viziers of the departments bow down to the sacred idol of The Verboten. Justice is not incompatible with the teaching of the Gospel inasmuch as the greater includes the less, but the heathenism of the departments is irreconcilable with a service of perfect freedom.

The matter is of vast importance to the poor. Are they more likely to be treated with honesty and courtesy in the open court, in the full publicity of daylight, speaking face to face with the arbiter of their destinies, or in the secret places of bureaucracy where the doomsman can only be

approached by petitions indited on official forms?

I can imagine the high priests of justice putting their Temple in order when they discover that for centuries they have in their ideals been ignorantly worshipping THE UNKNOWN GOD, whose statue stands in their parvise. A cult that worships in the light of day, has generally the seeds of righteousness in it, but a cult whose priests issue their decrees of life and death within closed walls, invisible to their victims, will never exercise supreme power with charity, mercy and humility. Yet in the nature of things, unless the effort is really made without much further delay, it seems to many shrewd observers that the departments will swallow up the law courts, merely by reason of their further and better immensity, much as the antediluvian mud buried the dinosaurs and ichthyosaurians of ancient times. For these, in their day, no doubt, thought themselves and their doings far more important than the movements of the circumambient slime. Nevertheless the mud did them in, and fossilised them. I should regret if any such fate awaited our contemporary judicial fauna.

We must not lose sight of the historical fact that the poor have been very patient towards law and lawyers through centuries of ill-treatment. We have moved along a little since the days of Edward III, but there is still a true warning for us in the words of the prophet Piers Plowman when he says:

Therefore I counsel
you, ye rich, have pity on the poor.

Though ye be mighty at the law
be ye meek in your deeds.

The same measure ye mete
wrong or right

Ye shall be weighed therewith
when ye go home.

* * *

To the poor the Courts are a maze
if he plead there all his life,

Law is so lordly
and loth to end his case;

Without money paid in presents
Law listeneth to few.

Now no prophet of to-day would see visions of "money paid in presents" to Judges, for at least we can boast that there is no corruption on the Bench since the habit went out of fashion in Elizabethan times. Yet it is still true that the law is a maze wherein the rich are guided by the clever ones who know the clues, and the poor too often get lost for want of honest advice. For centuries the trouble has been that those who were really serviceable guides and really knew the labyrinth were always retained for the well-to-do. As Piers put it in his blunt way:

There wandered a hundred,
in hoods of silk,

Serjeants they seemed,
and served at the Bar,

Pleading the Law,
for pennies and for pounds,

Unlocking their lips never
for love of our Lord.

Thou mightest better
mete the mist on Malvern Hills,
Than get a mutter save thou show thy
from their mouths money.

It is useless for lawyers to-day to quote tags from Magna Charta. The high ideals of law and justice have been with us as long as the poor. The time has come for something better than repeating them in election addresses. Also those who have a flutter at elections must learn to back real winners.

When Absalom cried out in a loud voice, "Oh, that I were made judge in the land, that every man which hath any suit or cause might come unto me, and I would do him justice!" he was, as we should say nowadays, playing to the gallery. Yet, sincerely uttered, what a noble wish it was. Let it stand as an expression of the still unfulfilled ideal of judicial duty and public service which we owe to-day to the poor of this country. No civilisation has as yet a judicial system that does justice to every man.

And I fear that Absalom's fine saying was only an election cry in his campaign against his father, recalling to the voters, perhaps, David's inconsistency in the theory and practice of justice in the matter of Uriah and his wife. In those days the King, the Lawgiver, and the Judge were but one person, so that to be made King was to be made Lawgiver and Judge, and you not only administered the laws but made them as you went along.

Nowadays the Judges are merely servants of

the law, like policemen and bailiffs and the hangman. Nor does the King make the laws, nor are there in theory any professional Lawgivers. The people—or at least so many of the people as trouble to vote—make their own laws, or are supposed to do so. At least they have the power of choosing their representatives and servants to make what laws they want.

If, therefore, a sufficient number of men in the street greatly desired amendment of the law in this or that direction, I have no doubt it would come about. But very few of the problems that trouble judges and magistrates come before the eyes of the average man in the course of his daily life, and he is scarcely to be blamed for not trying to amend that which he has not observed is broken and worn out.

One man may know at first hand the story of a home ruined by reckless credit and imprisonment for debt, another may know a cruel case of lives blighted by our inefficient divorce laws, a third may have seen the sad spectacle of an injured workman sinking from honest independence to neurasthenic malingering by reason of the poisonous litigious atmosphere of the Workmen's Compensation Act, whilst another may hear the complaint of the man who has been ruined by litigation and made bankrupt in his endeavour to obtain justice. But lawyers see these things daily. They earn their livelihood by a valuable monopoly of the right to appear in Court and deal with the business of mankind. They have, therefore, a special duty as citizens to see that the legal affairs of the poor are rightly managed, since

no one but a lawyer is allowed to manage them.

There are many signs that the public conscience is being slowly awakened to the iniquity of one side in a law suit having all the legal aid that money can buy and the other side nothing. In criminal cases something is done and a beginning is being made on the civil side in the High Court to give the poor legal aid. These reforms do not amount to very much as yet, but they are the first steps towards remedying Piers Plowman's grievances and, considering that it is less than six hundred years since that excellent visionary made his moan over the law and the poor, and the drawback cast upon poverty by the procedure of the Courts, there seems to have been no very unusual delay in Government taking the matter up. We may at least congratulate ourselves that we have got a scheme, of some sort, which can be amended and put into a business shape, and the prophet Plowman would rejoice if he could know that after five hundred and fifty years we were tackling the problems of life that worried him so greatly. In another six hundred years or so a lot of the little matters referred to in this book will get smoothed out. If you can acquire the habit of thinking of the world's progress in centuries instead of months you will find it very comforting.

And Piers was quite convinced that the way of reform was to base our legal procedure on the teaching of the Gospel, and it made him sad to think that in the places where the poor should get justice, unkindness was in power and kindness banished, yet he looked beyond his own time and saw that

human love shall yet come,
And make lawyers labourers;
and Conscience with him,
such love shall arise.

At present we are nearly as far from that goal as our fellow citizens of six hundred years ago, but there are signs that we are moving, though very slowly, towards the democratic principle of equality before the law, that has always been our professed ideal and to some extent our practice. The progress is scarcely perceptible and the legal historian, John MacArthur Maguire, in *Poverty and Civil Litigation*, states that owing to the humanitarianism of the English Kings from 1216 to 1495 there were courts of that date more open to the needy "than are for instance the courts of Massachusetts at this very moment." Yet in this State much is done to give legal aid to poor people.

Our own standard of legal aid is as yet a very low one, except in a few favoured places. But in the last hundred years great reforms have taken place, especially in criminal procedure. A hundred years ago no man charged with felony had the right to be defended by counsel. Sydney Smith, to whose advocacy the reform of this iniquity owed its being, complained bitterly of the official opposition to this and similar reforms, "the Attorney General and the Solicitor General for the time being always protesting against each alteration and regularly and officially prophesying the utter destruction of the whole jurisprudence of Great Britain."

That, of course, is common form. We had

similar exhibitions of official obduracy in the long campaign against the right of the prisoner to give evidence. There were generous instincts in this opposition, perhaps. The silence of the dock was often the last refuge of the guilty. When a man is being tried for his life the public nearly always live in hope that he will be acquitted. When Thackeray attended the examination of the prisoner in a French Court he was horrified at their procedure and with Victorian smugness pats himself on the back: "In England, thank heaven, the law is more wise and merciful." To the many guilty, yes, but not to the few who were innocent and wrongly accused.

The Poor Prisoners' Defence Act, 1903, and the Court of Criminal Appeal Act, 1907, are both important reforms to have achieved but we are still far away from the ideal. In no case can an accused person to-day receive any assistance in the police court, a point that Sir Archibald Bodkin, the public prosecutor, thought should be set right in cases of great gravity, especially in murder cases. But all cases are of "great gravity" to the accused. Murder cases are of great gravity to the prosecution, since if it is successful the accused has to be killed and everyone is properly anxious that the verdict should be right beyond doubt.

Solicitors and counsel acting for poor prisoners, who come into cases when the indictment is before the Court, with little hope of proper remuneration and, what is worse, no adequate fund to investigate points for the defence, are not properly equipped for the contest.

The accused will never be on the same plane as the Crown until he is taken out of the dock, where as a presumably innocent man he has no right to be, and placed in a position to instruct a Public Defender, who should have the same access to all the known facts of the case as the Public Prosecutor. The two offices should be of equal honour, for what greater career can a man have than the power and opportunity to insist upon justice being done to the poor? Only, too, in this way can the prisoner be allowed to have discovery of all the facts and papers in the hands of the Crown and not merely those that the prosecution thinks fit to produce. I agree that there are cases where it would not be reasonable to put the defence, as now conducted, into possession of every police report. But when you have a Public Defender all the materials of the prosecution should be shown him, for he and the Prosecutor will both be engaged on the same purpose, which is not the conviction or acquittal of an individual but an inquest of truth. We have seen in recent trials the inconveniences that arise from the inadequacy of a defence, and the public discontents that follow certain verdicts. I by no means agree that such popular anxiety is generally founded on reason. I believe most of it is due to a very right and natural hatred in mankind of destroying the life of a criminal. But seeing that this is one of the many terrible alternatives that may befall anyone accused of crime, such a person ought to have the same assistance to uphold his innocence that the State has to prove his guilt. A rich man, of course, can have

an equality of legal aid. The poor man has only a very inferior article.

The provision for legal aid in civil cases, except in matters of divorce, hardly exists. It probably never would have existed but for the curious position of divorce jurisdiction and the narrow trade union psychology of the Divorce Court Bar. As long as divorce could only be obtained in London the Divorce Court Bar had a profitable, easily-worked monopoly. Small Admiralty and Probate cases went to the County Courts, but not divorce cases. Divorce was still regarded as a luxury for the rich and to hinder the poor having access to the Divorce Court it was kept in London.

The official excuse for this injustice was that a Divorce Court required some special kind of expert to preside and practice in it, whereas, of course, the truth is that the issue to be tried is one of which the whole of adult mankind has equal knowledge, and the same issue, in the far more difficult form of affiliation cases, is tried every day before lay magistrates with the legal aid of local attorneys in country police courts—and let me add, tried with as much success as any divorce case in London.

For many years the inequality of the law between rich and poor in matters of divorce had been a scandal offensive to the consciences of those who are affected by such matters. There had been continuous discussion of the situation in the Press and the Divorce Commission had investigated and ventilated the unfair treatment of the poor by the law and its practitioners. At

the Bar, too, it was felt by many that, if a lucrative business was to be kept going, it was only reasonable some concession should be made to those unable to pay costs, which were really in the nature of a luxury tax.

In 1914 a system was started to give poor persons assistance in the High Court in bringing actions and defending actions where it seemed reasonable to do so. A Poor Persons' Department was started in the Royal Courts of Justice at London with branches in the District Registries to which applicants could apply for relief.

It was soon found that there were a large number of poor persons desirous of applying for divorce. Applications for other relief were not numerous. A poor person has very seldom any cause of action that brings him to the High Court and if he issues a writ there he is met by an application on the ground of his poverty to remit his action to a County Court. This is granted as a matter of course as he is unable to give security for costs and when he is sent to the County Court he has lost his right to legal aid under the rules. This very obvious injustice made Poor Persons' procedure applicable in the main to divorce cases, which the Bar would not agree to remit to the County Court and were now called upon to deal with as a matter of charity.

The applications for Divorce under the Poor Persons' Rules were very numerous, in recent years some 2400 a year, of which half were granted relief. This threw an enormous burden on the Divorce Court. It is not generally understood that the bulk of divorce business is un-

defended routine business. Indeed, it is amazing how the profession has managed to keep the fees of it at their present price, as most of it, as is now openly acknowledged, could be better done by an administrative machine.

In the last three years nearly every divorce petition has been granted. The actual figures as given in the Civil Judicial Statistics of the Result of Trials for Dissolution of Marriage are as follows:—

		Decree for Petitioner.	Decree for Respondent.
1924.	Husband ..	975	
	Wife ..	1479	1
1925.	Husband ..	1042	
	Wife ..	1613	2
1926.	Husband ..	1114	
	Wife ..	1647	1
	Totals	7870	4

A layman may ask himself what are the lawyers doing and what is all the litigation about. The answer, of course, is that the bulk of it is unnecessary. That is to say, the litigation is unnecessary. But there is and always will be honourable work to be done by lawyers in endeavouring to bring the parties to a settlement of their troubles, or where that is not possible, to make agreements as to the alimony to be paid, the access to children, and other matters which require expert legal advice, and in some cases, no doubt, it will always be necessary to make applications to the Court.

But that the present divorce system is a ridiculous anomaly is obvious. Most of the cases are actually undefended cases. The rest of them are cases to which there is no real defence. Now in the old days the minimum cost of an undefended divorce case was £40—£45 but it was often increased to £70 and more. Defended cases ran from £70 to £500. These are taxed costs of one side only. As long as all the divorce customers were paying customers, the business was a very comfortable and nutritive one, but when the Poor Persons' Rules let in a lot of cheap undefended cases, these wasted a deal of time, and brought in little or nothing to the charitable solicitors and counsel who volunteered for the work, except discontented comments from the bench, who were accustomed to the cream laid copy correspondence of the most expensive attorneys, and it soon became obvious that the scheme must go as being unsuited to the exclusiveness of the Court.

Divorce cases were then allowed to go into the provinces to be tried by Judges of Assize and the Poor Persons' Rules went to the scrap-heap. A committee was appointed and sat for a long time but ultimately reported in February, 1925, that the Poor Persons' Rules did not function. You could not find an adequate number of solicitors to do the work. There were plenty of barristers ready to give gratuitous service, but a shortage of attorneys. This was due to the unpleasant nature of the solicitor's work. It was one thing to have to find out-of-pockets, interview witnesses, explain to an uneducated client what the business was, and prepare a case to look like a tip-top

West-End divorce, which was the solicitor's job. Whereas all the young advocate had to do was to get up in Court and examine a few witnesses in an undefended case, and if the Judge was grumpy about the way the case was prepared, make a suitable apology, a branch of the art of advocacy which it is excellent to practice.

The machine for giving even this amount of legal aid to the poor had broken down. The sending of cases to the Assize towns did not improve matters, for very foolishly the cases had still to be entered in London, and all interlocutory affairs dealt with in London, the officials there naturally objecting to be disestablished. This meant that London agents of local solicitors were asked to do voluntary unpaid work, to which, of course, they objected.

The Commission, however, agreed to two general principles. First, they acknowledged that it is "a proper function of the Government to ensure that meritorious poor persons are not deprived of access to the High Court by lack of means." I do not like the word "meritorious." I find no precedent for it in the Gospel. The word is not there. In my concordance I find "mercy" and then we go on to "merry." I could understand suggesting "mercy" for the poor or proposing to make them "merry." But the word "meritorious" I find indigestible. I know of no Order of Merit for the poor. Mr. Justice P. O. Lawrence, the Chairman of the Commission, must have had a reason for proposing that only the meritorious poor should have legal aid. The word suggests "Sandford and Merton" and Miss Edgeworth and

"Ministering Children" rather than divorce procedure. But it may be a term of art in the Chancery Division, the effect of which I do not appreciate. For the purpose of my argument I must with all respect strike the word out as embarrassing and irrelevant to the statement of the principle.

And the second principle that the Commission lays down in unequivocal language is "that there exists a moral obligation on the part of the profession, in return for the monopoly in the practice of the law which it enjoys, to render gratuitous legal assistance to those members of the community who cannot afford to pay for such assistance." Here again I have cut out a proviso "that no undue burden is thereby cast on any individual members of the profession." This phrase should be quashed for uncertainty, as the old criminal pleader would say. But the two principles as I have amended them are really excellent. Left as they were originally drafted, an attorney is invited to say to the poor man who asks assistance: "My good man, you do not seem to me meritorious and even if you are I am far too tired to attend to you." I am sure this was not intended and I am equally sure the profession do not want these qualifying phrases and will accept the principles in their integrity.

It is necessary to deal with the matter in some detail, as what has happened is that, on the advice of the Commission, the State threw up its management of legal aid business, and placed the onus of organizing the whole affair on the solicitors, most of whom are members of the Law Society

in London or of local Law Societies in the country. New rules were issued and in April, 1926, the Law Society and many of the Provincial Law Societies had appointed Committees as prescribed by these rules to assist poor persons in their litigation in the High Court. How far this will succeed, in its very limited effort, remains to be seen, and it is too early to express any opinion about what is as yet only an experiment. There is no appeal from the refusal of a Committee to grant legal aid and the State has entrusted the whole business to the Law Society.

This procedure, however, only deals with High Court matters and therefore only touches the fringe of the problem which has yet to be dealt with. An article in the *Law Journal* laid down the duty of the profession to the poor very clearly. In the present state of civilization legal assistance was, the writer declared, "an absolutely essential service." There was, he agreed, a moral duty on the profession to help the poor, because lawyers have an absolute monopoly in legal business, and it is to the highest interest of the profession as well as of poor persons that legal aid should only be given by properly qualified persons.

This is, I think, very honestly and sensibly stated. And as the bulk of the legal affairs of the poor come in to the County Court the practical consideration of the problem turns upon how legal aid can best be given in civil cases in the County Court. This matter has been considered by a Committee whose Report was presented to Parliament in January, 1928. This final Report

of the Committee on Legal Aid for the Poor is a disappointing document. It merely suggests that the State should wash its hands of the business and expresses the hope that charitable lawyers and laymen will look after it somehow or other.

They did censure a practice of the High Court rules to which I have already referred and which has long been obviously indefensible, namely, the rule whereby the defendant asks for security for costs, and the poor plaintiff not being able to find it, is immediately remitted to the County Court and loses all claim to legal aid.

The Committee agree that this is unjust and think that special provision should be made for this small class of action. But with regard to the "overwhelming proportion of the cases not brought in the High Court" they have no proposal to make, except that they should be left to the voluntary charity of someone else, and the Treasury should never be asked to remit those never ending fees which are such a heavy tax on all poor litigants.

I am far from supposing that the members of the Committee arrived at these conclusions from any form of hard-heartedness or want of sympathy with the poor. They admitted themselves that "the social legislation passed in the last generation has in our opinion made legal advice more often necessary in the case of the poor than it was before." But all they can do is to "appeal to members of the Bar and Solicitors to co-operate" in works of charity.

There is considerable evidence in the wording

of the report that the Committee did not understand the real nature of the problem before them. "It must be remembered," they write, "that a large proportion of the cases in the County Court are simple in character and the Judge is well able to ascertain the facts so that it is neither necessary nor advantageous that there should be any legal assistance at all." Why must that be remembered which has no foundation in fact? Who told the Committee that County Court cases were simple? And why were they so simple as to believe it? If their conclusion is sound and legal assistance is "neither necessary nor advantageous," why not abolish it altogether? It is a revolutionary proposition no doubt, but it has had considerable support ever since Jack Cade raised his standard on Blackheath and Dick his henchman moved the resolution: "The first thing we do let's kill all the lawyers." I agree with the Committee to this extent, that if lawyers are not necessary neither side should have them, but if they are necessary both sides should be equally equipped.

And the suggestion that all a County Court Judge has to do in his day's work is to unravel a few simple facts, that he has no legal problems to trouble him and that his work is intellectually of a lower order than that of the High Court Judge, is another misconception of the obvious. A judge of a County Court has a far wider range of civil law to master than any other judicial functionary in the Kingdom.

Take as two examples of the sweet simplicity of legal matters in a County Court, which no

High Court Judge is entrusted with, the Workmen's Compensation Act and the Rent Restriction Acts. Is legal advice as to these matters, which may bring relief or ruin into the homes of the poor, a matter which lawyers in honour to their profession can wash their hands of? I used to think that, in principle, the Workmen's Compensation Act was simple enough, because, as Lord Halsbury said, a Workmen's Compensation Act is an act to compensate workmen. But when I said so in a judgment I delivered, a Lord Justice was very angry with me, and told me I was a very conceited person to think I could understand what puzzled him. As a matter of fact, I did understand the Act, as the House of Lords understood it, but not as the Court of Appeal understood it, but the fact that they differed about it is, I agree, not evidence that the Act is simple. The "simplicity" of the business is, indeed, well exemplified in the seven hundred pages of Mr. Berryman's great work on the subject, and his masterly analysis of the many hundred leading cases with which the legal practitioner is bound to be acquainted.

The poor cannot bring their compensation cases or running down cases into court themselves, and as the Committee points out, they go to well advertised societies which are "merely devices used by solicitors of a speculative type to obtain work." It is admitted that the voluntary societies are not equal to the demand and I hold no brief for the speculative solicitor. It has been my task on occasion to check his rapacity. But it is cant to deplore his activities when we

can only fold our hands and do nothing effective ourselves to help the poor.

I say without hesitation that many speculative solicitors do their work honestly and effectively, and if the Registrars and Judges are men of business they do not impose on their clients. As things are, and as the Committee proposes to leave them, the speculative solicitor is necessary and advantageous. Unless he is there to back a poor man's cause with gratuitous services and money enough for counsel's fees, surgeon's and doctor's services, and Treasury fees, how can the case be launched at all?

Indeed, could one be sure that a speculative solicitor only took up a cause which he thought to be just and did not seek undue advantage of his client, ought we not to admit that such a man would be engaged in a practice of delivering the poor that cried and the fatherless and him that had none to help him? The Committee seem to have condemned the speculative solicitor unheard and, indeed, they do not appear to have invited many witnesses before them who were likely to hinder the complacent course of their sleeveless errand towards negation.

And though the evidence is not published, one can hardly suppose that the County Court Judges who were asked to advise the Committee, can have told them of the simplicity of the Rent Restriction Acts. These statutes, though used in the main for the protection of the poor, have by their intricacy and uncertainty ruined many poor persons. Speculators have used them to harass poor landlords and promote malicious litigation.

Did the Committee hear nothing of this or did they care for none of these things?

It would have interested the Committee to have studied the Final Report of the Departmental Committee on Rent Restriction 1923. They would have read there a very valuable suggestion, which has hitherto been ignored by authority, but which has in it the germ of a real boon to the poor. These Commissioners "are of opinion that all practicable steps should be taken to simplify the present procedure for settling cases of dispute, so as to provide if possible that a case might be heard or decided or a settlement arrived at before the relatively heavy costs of litigation are incurred."

What are we to say of the efficiency of a Committee on Legal Aid for the Poor which apparently is either ignorant that such schemes exist in other places and work successfully or too insular or indolent to consider them?

Much more could be done to give Legal Aid to the Poor than is done, but it did not want a Committee to tell us that. Simplification of statutes and procedure and a lower standard of fees are matters that cry out for redress. But the best form of legal aid for the poor will be found, not in subsidising litigation, but by promoting conciliation.

The strong vested interests both of lawyers and bureaucrats are, we know, opposed to this idea of conciliation, and perhaps the Committee remembered the wise maxim of Lord Beaconsfield: "There is no diplomacy like silence."

But before we explore the possibilities of conciliation it is as well, since the Committee has

not given adequate consideration to the matter, to point out that had they been more than superficially interested in the subject they were finally disposing of, they would certainly have made some study of what is being done in the United States of America. For as Elbert Hubbard said, "This is the richest country the world has ever known. We are loaning money to Europe—and ideas, too." Without concurring in all this boast implies, I say without hesitation that if our Committee had borrowed a few ideas about Legal Aid from the organizations and published investigations of the United States, these borrowed plumes would have given at least an appearance of substance to their own starveling offspring.

Not only are there in the United States many old-standing associations for giving Legal Aid to the Poor, but since 1923 there has been a Central Organization of Legal Aid Societies with a permanent secretary which holds annual meetings of delegates from various States to discuss problems of principle and procedure. A Committee that had urged on the Lord Chancellor or the Home Office the advisability of calling together such a congress in this country and forming some continuous body to follow up their consideration of the business and make use of the practical experience gained, would at least have made a useful suggestion.

The activities of Legal Aid in America were enormously encouraged by the publication in 1919 of Reginald Heber Smith's *Justice and the Poor*. He is a member of the Boston Bar and has devoted much time and care to what he calls "a

study of the present denial of justice to the poor." The book is an elaborate and eloquent but scientific study of what ought to be done, has been done, and can be done. No one can claim to have taken a serious interest in legal aid who has not studied its pages.

In 1923 the National Association of Legal Aid Associations was formed, which has met annually to discuss practical problems of the work and published transactions. Their report on the methods of keeping legal aid records is of great practical value. The essay of John MacArthur Maguire on "Poverty and Civil Litigation" which appeared in the *Harvard Law Review* in 1923 I have already referred to and Mr. Maguire tells me that he is now at work on a history of Legal Aid Societies in America. I set down this short summary of what is happening elsewhere to encourage workers in the cause in our own country.

There is a far more lively interest in legal aid in the Bar associations of Canada and the United States than there is with us. In a recent Report of our Bar Council the only allusion to legal aid was concerning the right of a prisoner in the dock to call upon any barrister to defend him for a guinea fee. It was solemnly discussed and decided that a barrister might leave the Court on hearing a prisoner ask for a dock brief, but that it was not etiquette for a barrister to remove his wig in order to notify that though he was on the rank he was not for hire. There seems to be no special committee of the Bar Council whose duty it is to deal with legal aid and the Council seem to have

taken no interest in the investigation of the Legal Aid Committee. The attitude of the general body of the profession towards their duty to the poor is disappointing.

The public spirit and sense of charity in individual members of the Bar and among the solicitors is beyond all praise, but that is not enough. The matter is one for collective action and, now that the State has finally washed its hands of the whole business, it is essential that not only the Law Society but also the Bar Council should combine with the existing charitable societies and promote those schemes of legal aid, the necessity for which the Committee acknowledges, and the responsibility for which it declares to rest with the bodies who alone are allowed by law to practice in our Courts.

For unless Conscience prompts lawyers to make themselves labourers in this cause they cannot honourably claim to maintain their traditional privileges and lucrative monopoly.

CHAPTER XI

CONCILIATION COURTS

"To give light to them that sit in darkness and in the shadow of death, to guide our feet into the way of peace."

Luke I, 79.

I REMEMBER in my youth being told in the words of Marcus Aurelius: "Be satisfied with your business and learn to love what you were bred to." At the time I may have resented the advice, but I have lived long enough to see the wisdom of it. After thirty-three years of the County Court I have learned to love it and was sorry to leave it. It is like any other job of work: very much what you choose to make it.

As a London-bred boy I used to think the driver of an omnibus had a glorious and varied career. The Judge of a County Court has much the same outlook and experience of life and human nature as the old 'bus-driver. Every day brings you new passengers who accompany you for a few minutes on the journey of life, and you get to know many old ones and have a friendly crack with them over their domestic troubles. Moreover, at moments your daily job brings you in near touch with the joys and sorrows and trials and daily efforts of poor people, and once in a way perhaps you can be of use, which to a child, and to a grown-up who has any of the child left in him, is always a jolly thing.

When you have really got quite accustomed to

enjoying your work the natural garrulity which your friends lovingly attribute to senile decay stimulates you to make them partners in your joy. The narrow circle in which you spend your daily life has become your only world. You find yourself quoting with approval "with aged men is wisdom, and in length of days understanding," and you begin to believe you are the only person who really does understand. Childlike, you find dragons in your path that you want to slay, pure and beautiful souls are oppressed and you ache to release them from bondage; there are giants of injustice and persecution in the land that must be destroyed. For the ways in which Master Ogre the Law and the Dragons of Departmentalism swallow up the poor, are as true as the old tales of the nursery and, as professors of folk-lore will tell you, are founded on similar facts. Would that a hero could arrive to destroy these monsters and rescue their victims.

It is, indeed, a hero's task. I know by historical study that the way of reform lies through official mazes of docket and précis and pigeon-holes, that legislative decisions are hatched out in some bureaucratic incubator that the eye of common man has never seen. The cleaning of the stables where the departmental oxen fatten in their stalls, will require the strength of a Hercules combined with the enthusiasm and knowledge of a Brougham, and the sense and stedfastness of a Rowland Hill. Moreover, if the task is to be achieved within the limits of contemporary civilisation the reformer must be a Prime Minister, a Lord Chancellor or possibly a Minister of

Justice. But in everyone's interest it were well it were done quickly.

Already a century has passed since Lord Brougham swept away many abuses and preached the true gospel of legal reform for the poor. His mantle awaits a wearer. Bacon tells us that Time is the greatest of all innovators, but he does not explain to us why, unlike all human innovators, Time is in no hurry about it. I have quite distinct beliefs, which to me are certainties, as to how Time will reconcile the law and the poor in the centuries to come, when our social absurdities and wrong-doing will not even be remembered to be laughed at. The law will never be a really great influence for good, until it is utterly conquered, put in its proper place in the world, and based on the principle of Love. In other words, when the Law of Love receives the Royal Assent no other law will be necessary.

Nineteen hundred years ago a new principle was introduced into the world. It was the principle of unselfishness, and its apostles were labour men. In relation to man's personal life it has made some progress, but in practical social politics its business value is not yet fully recognised. Still, a beginning has been made, and that old snail, Time, is doubtless satisfied with the pace of things. Let us remember hopefully that two thousand years ago unselfishness as a basic principle of life, doing to others as you would be done by, promoting peace and good-will instead of strife and ill-will—these ideas as business propositions were as unknown as railways, telegraphs, motor cars, and aeroplanes. A vision of to-day

would have been a wild fairy tale to Marcus Aurelius, a vision of two thousand years hence would be incomprehensible to us.

One does not mean, of course, that unselfishness had never before been preached as an ideal, but a society based on the common quality of all its members placing the interests of others above their own was a new notion, and the novelty of it has not yet worn off. Nevertheless, love and unselfishness have achieved sufficient lip-service already, to make me hopeful of their future, and I foresee a time when they will be the foundation of the laws of the world, and the preamble to every statute will be "Blessed are the Peacemakers."

I have the same belief in the evolution of the moral world and its onward movement that I have in the revolution of the physical world and its rotary movement. For this reason I expect my great-grandchildren of two thousand years hence to be much better behaved than I am. You can see it coming along in your own grandchildren unless your sight is getting dim. And I am quite clear that my own manners are an improvement on my great grandfathers', who lived in caves, and, when they had disputes, made it clubs, and battered each other strenuously, until it was proved which had the thickest skull, when he of the toughest cranium was adjudged to be in the right.

The vigorous legal procedure of the cave men sounds laughable enough to us nowadays, but does anyone think that two thousand years hence superior unborn persons will not be smiling super-

ciliously over the history books that record the doings of our judges, our hired counsellors, our sheriffs, our jailers, and our hangman?

We have abolished duelling and ordeal by battle and no longer is it permissible for citizens to assert their individual rights personally by violence and murder. We have not abolished this custom for nations, but a large majority of civilised individuals desire the disestablishment of war, and what humanity desires with sincerity it generally achieves. I do not suggest that litigation can be abolished in a few years but there is no doubt that its hardships could be mitigated to the poor by the institution of Conciliation Courts.

This idea had the hearty support of Lord Brougham. Conciliation Courts exist and have worked successfully for generations in France and Denmark and more recently have been experimented with in the United States. We have seen that without legal aid the poor cannot hope to obtain the same justice as the rich, and that legal aid is at present not forthcoming in sufficient quantity or quality. It is quite unlikely that charity will ever endow legal hospitals for the poor. If they were built and equipped, it is improbable that the voluntary services of the best lawyers would be obtained to advise and operate on the patients and to lecture to students who would wish to attend them. It seems curious, that with the example of the doctors before them, the lawyers have never sought to minister to the poor through some machinery analogous to the hospital and the out-patient department. But so it is.

This being the condition of affairs, I have for many years put forward the suggestion that we should experiment with conciliation. The miserable litigation that surrounded the Rent Restriction Acts might easily have been avoided if Parliament had authorised conciliation, but to our legislators the idea, though sufficiently ancient to be respectable, was considered revolutionary. It was proposed, without much ardour, by a Commission, but I never heard that it was ever discussed in Parliament.

One must not, of course, lose sight of the difficulties in obtaining sanction to try this experiment. The lawyers, who as a profession have always opposed every legal reform proposed by their more enlightened brethren, have a natural aversion to conciliation as tending to abolish litigation, which they regard with enthusiasm as containing all the vitamins in the alphabet. The adequate nutrition of meritorious lawyers is, I agree, a matter of national importance. It is for that reason that I only propose as a practical experiment that conciliation should be compulsory up to a certain amount, say, £50 to begin with. Or I should be very willing to make the experiment in certain classes of cases, as for instance between landlords and tenants or masters and workmen.

Conciliation must be compulsory and must be obtainable for a very small fee, if indeed it cannot be made free of tax altogether. Here again it is bound to be opposed by the Treasury. The fees paid by suitors in the County Court are about £700,000 a year. How much of this taxation

is borne by the poor is not disclosed. All the costs of debt-collecting, for instance, are originally paid by the creditor, but are added to the judgment debt and made recoverable from the debtor.

I do not want to suggest for a moment that if conciliation had been made compulsory in Rent Restriction cases, the lawyers and the Treasury would not have suffered. There was a great deal of speculative litigation and spiteful litigation under the Acts which would have been nipped in the bud. Some lawyers might have lost a few fees and no doubt the Treasury would have lost a great many fees. I agree that these results must follow to some extent but, as I have said, I do not regard it as right that the poor should be taxed in this way and forced to pay these exactions in the pursuit of justice.

You have noted that I say conciliation must be compulsory. That is essential. But conciliation will not deprive a citizen of any of his legal rights. Conciliation is a condition precedent to litigation. That is to say, that before a man can go to a lawyer and run into his debt for costs, and launch what may turn out to be a ruinous litigation to himself and his opponent, both of them have to appear before a judge who hears what the dispute is about and endeavours to reconcile the parties to agree to a settlement. If they do agree the settlement is set down and stands as the final judgment in the case. If they do not agree then the judge gives them leave to pursue their litigation in the ordinary way.

As things stand to-day, by the time a case comes before a judge sums of costs, very consider-

able to the parties, are already at stake, and though counsel often achieve a wise settlement for their clients, to save them from appeals and to put an end to useless litigation and waste of time and money, the difficulty of conciliation at that stage, when the munitions have been paid for and the fireworks are ready to go off, can be easily appreciated.

It is pitiable in a County Court to see the useless litigation which quite poor people are encouraged to bring forward. As many people know to-day, a dog is allowed by law to have what is vulgarly called his "first bite," which is a custom legally referred to as the doctrine of *scienter*. A neighbour's dog bites a child. The parents are naturally angry. A dog-owner always believes that his dog can do no wrong. There is a neighbourly altercation. Both parties consult lawyers. If the Plaintiff's lawyer is speculative or hopeful and he can get something on account of costs he issues a plaint at once. If the Defendant's solicitor is of a similar type he discourses learnedly of *scienter* and does not suggest paying something into Court for fear that might stop the case. In these cases counsel are often employed, for some speculative solicitors always appear by counsel. When the case reaches the judge the little girl is quite well, though the doctor who has attended her assiduously, still thinks she ought to go to the seaside; the mother brings into Court her child's torn stocking, the Defendant proudly produces his dog, and hosts of witnesses to his dog's character, and the squalid litigation proceeds.

The costs of a litigious show of this kind may

be anything up to £30 and with a little sense and good advice it might be justly and honestly settled in ten minutes for a small sum of money and the parties could shake hands and be friends. If the Plaintiff had known that he had to prove *scienter*, and been told originally the probable cost of his venture if he failed, if the Defendant had been asked to pay the doctor's bill and buy the child a new pair of stockings or whatever was right and fair, not as a legal duty but because it was the decent thing to do, who can suppose that these two neighbours would prefer to waste their substance and embitter their lives with such futile litigation?

I have no hesitation in saying that had I had the opportunity of assisting the poorer litigants who appeared before me to settle their cases by methods of conciliation, before they had spent what to them were large sums of money in solicitors' costs and court fees, I would have succeeded in at least 75 per cent of the matters I tried, and with better results to the litigants and a saving to them of their time, their money and their peace of mind.

And that this can be done, if the people will it to be done, there is no doubt whatever, for it has been done and is being done in other countries whose citizens have taken thought how to adapt Gospel principles to practical business affairs. In the kingdom of Denmark in the year 1922 more than 75,000 lawsuits were disposed of quickly, cheaply and satisfactorily by an official procedure of conciliation or mediation that has been in daily use in Denmark for more than a century.

On June 28, 1922, I had the honour to receive a visit at Lambeth County Court from a party of Danish lawyers who desired to see our methods of work. I afterwards had the pleasure of a personal visit from their leader, a Judge of the Danish High Court, and Mr. George Ostenfeld, of the Danish Bar, who explained to me their methods of conciliation. Mr. Ostenfeld was kind enough to send me all the forms and papers in use, with a translation of them and an explanation of the procedure in different classes of cases. There is nothing in them that we could not readily adapt to our own needs if we had the will to do so.

The Legal Aid Committees could have learned all that I know about the business and more, had they inquired of the Government Department under whose auspices the Danish visitors came over. But the jealousy of departments, and the etiquette of ignorance and distrust of each other's doings would no doubt stand in the way of any such inquiries.

In the United States the Danish Conciliation system is well understood and a beginning has been made to naturalize it in some States. It is recognised that it must have a business future since it is as efficient, more speedy and less expensive than litigation. Further, as Mr. Reginald Heber Smith points out in his admirable paper on the Danish Procedure, it is in accordance with the Gospel Message: "Agree with thine adversary quickly while thou are in the way with him."

That conciliation has always been a practice of the best of our lawyers is known to all. Many

good attorneys have worked and do work to prevent litigation and to promote peace. Others, alas, do not. But we want conciliation to be made a part of our legal system. It appears that there were probably unofficial methods of conciliation in use in Denmark before the legal methods were introduced. But on July 10, 1795, Christian VII, King of Denmark, established the first Conciliation Act. The preamble of this beautiful edict will, I hope and believe, some day be repeated in a statute of our own. It runs in this way: "Whereas it is our most earnest desire to prevent unnecessary and costly litigation between our dear and faithful subjects, we have deemed it expedient to create an institution for conciliation which shall be established at once throughout the cities, towns, and rural communities of Denmark."

This law consisted of fifty-nine sections and remained in force until 1916, when its procedure was altered and modernised. It would be beyond the purpose of this essay to describe the procedure in detail, nor do I suggest that in its varied practices of judicial and lay commissions for urban and agricultural districts it would be advisable to follow it slavishly in this country.

For the present I should be content if conciliation were enacted for cases of small money importance and for the affairs of poor people, as for instance, Rent Restriction cases and Workmen's Compensation cases. But the first principle of Danish Conciliation Law must be observed, namely, that conciliation is a condition precedent to litigation, and that no action can be brought,

no Court costs or fees incurred, until a conciliator has seen the parties, heard their story, pointed out to them the risk and hazard of their venture, and satisfied himself that one or the other is a froward man intent on sowing strife, or that the dispute between them is of a nature in which justice can only be done to both by means of a judicial litigation.

Without a certificate from a conciliator that a case is "fit for litigation" no law-suit in Denmark can be commenced. In Copenhagen Municipal Court the conciliation is undertaken by the judge. In 1922, of 17,235 cases that came before the Court the judge only referred 14 cases to the Superior Court. He gave judgment in 5228 cases just as we do in undefended cases in a county court. But there would at this stage be no costs and but small fees to add to the debt. For, indeed, why should we add to a poor debtor's burden a further burden of fees and costs when he is ready to confess his indebtedness and pay what he can? The judge non-suited in 122 cases, 3812 cases were discontinued, and in 8059 cases the parties made conciliation agreements.

In Norway the Conciliation system is more completely judicial. The summons which calls on the respondent to appear in Court is at the same time a summons to appear in Court in the event of it being necessary to try the case. In this way the conciliation proceeding is a step in a possible legal proceeding if that becomes necessary, but both Norway and Denmark have lay conciliation commissions as well as legal commissioners. The judicial commissioner seems preferable, "as if the

parties are conciliated they have secured justice under the mediation of a trained and impartial legal mind with very little delay and at relatively small expense."

And our French neighbours since 1790 have had a valuable local conciliator in the *juge de paix,* a magistrate residing in the canton "whose duty is less to try law-suits than to endeavour to prevent them." The law of France, by its preliminary of conciliation, seeks in its own way to arrive at the results attained to in Denmark and Norway. The parties in France appear before the *juge de paix,* who endeavours to persuade them to accept a friendly settlement. "This attempt," says M. Poincaré, "is so often successful that many judicial instances go no farther than the study of the *juge de paix.* The more he is loved and respected by the people, the better his chances of succeeding in this delicate mission." But he has also judicial competence in certain cases in which he can give final judgment if the parties cannot be reconciled.

We, too, have our justices of the peace, but their duties are mostly penal and judicial and the nearest they can get to conciliation is to collect the fees on cross summonses for assault, give a scanty hearing to the lawyers that they may earn their costs, and then bind both parties over to keep the peace.

I have never contended that the particular form of conciliation adopted by our neighbours will exactly suit our own wants. But I cannot understand the attitude of the general body of citizens toward Courts of Conciliation. To Lord

Brougham, who understood the problem of legal reform for the poor in his own day, as no other Lord Chancellor has done either before or since, Conciliation Courts were as a matter of course a leading feature of his programme. The poor cannot afford to litigate, and the lawyers have not time or intention to give them really adequate assistance. The law courts are too costly for the poor and, indeed, are to-day altogether beyond the reach of most workers' incomes. The departments make play with this condition of things to persuade Parliament to enact laws handing over the rights and liberties of the people to be dealt with as they shall from time to time decree and think fit. That is not an arrangement to which any thinking Englishman will readily submit. He may wince at the whip of the law but he has no wish to transfer his business affairs to the mercy of scorpions.

Conciliation Courts should appeal to business men, because they can be proved by long experience to be economic and speedy in their working. They will save large sums in time and money now wasted in futile litigation.

Conciliation Courts ought to appeal to any Christian Church, that is not too resolutely occupied with myths and dogmas and theological bickering about discredited folk-lore.

Conciliation Courts, when it is understood how they work and what they may do for humanity, must appeal to that large unorganized body of men and women to whom the message of the Master is a possible basis of the conduct of life and business.

Conciliation Courts may be made a legal method of arriving at just, rational and unselfish agreements between man and man. If that is not a result in accord with the teaching of the Gospel, then the message is naught.

I have drawn from my experience a picture of how the law, and the departments under our law, deal with the poor man's affairs to-day. I agree that this is mitigated to a considerable extent by the good sense and charity of the officials who have charge of these affairs. But that is not enough. The machine is largely out of date. The spirit that moves it is not the spirit of the Gospel. For the message of the Gospel is not so much a message of 2000 years ago, but a message of what we can achieve to-day, if we will, but if not in the ages to come.

I have not the least belief that this little book will greatly hasten the reforms I have suggested, but it will not retard them. I have a very real belief that all the reforms I have written about will be enacted in due time and, like all other reforms of a similar nature, they will be forced on the authorities by the general good sense of public opinion.

Perhaps the last people to hear the message will be the busy lawyers in the Temple. This will be entirely in accordance with precedent. But some day a little messenger boy will bring instructions from Parliament to the Law Officers to prepare a short and simple statute to establish Conciliation Courts. I can picture to myself the little lad passing, like Pippa, across Pump Court and flitting through the Cloisters singing in a shrill treble:

"God's in his heaven——
All's right with the world!"

And the Attorney General, like Sebald, when he opens his brief, will hurl the painted idol, which lawyers in derision call the White Book, into the flames, and sit down to draft a real White Book, founded on the Gospel, containing the Law and Practice of the Courts of Reconciliation.

THE END

APPENDIX

APPENDIX A.

CIVIL JUDICIAL STATISTICS, 1922.

TABLE XX.—COUNTY COURTS.

(11) *Expenditure and Receipts (Fees).*

	1922. £	1921. £
EXPENDITURE:—		
(1) Salaries, Bonus, Pensions and Travelling Expenses of Judges	129,841	135,823
(2) Cost of Housing	59,616	62,999
(3) Rates on Buildings	15,497	16,763
TOTAL	204,954	215,585
(4) Salaries and Expenses of Registrars, High Bailiffs, Clerks, Bailiffs, and Ushers, and of Headquarters Staff	544,213	634,918
(5) Postage	16,900	15,174
(6) Bankruptcy (Registrars' Remuneration) ..	14,499	11,345
(7) Companies (Winding up) (Registrars' Remuneration	168	174
(8) Cost of Audit	200	310
(9) Stationery and Printing	20,170	23,663
(10) Superannuation Allowances	1,828	4,794
TOTAL (of Items (4) to (10)) ..	597,978	690,378
RECEIPTS:—		
(11) Fees Appropriated in Aid of the County Court Vote	*552,590	415,211
(12) Bankruptcy Fees	38,951	28,405
(13) Companies (Winding up) Fees	624	603
†NET COST OF COUNTY COURTS	5,813	246,159

* (11) £550,990 was taken in fees on proceedings in the Courts; the balance in the Registry of County Court Judgments.

(12) Fees taken in stamps issued by the Inland Revenue and paid over to the Treasury.

(13) Fees taken in cash in County Courts and paid over to the Treasury.

† The items (1), (2) and (3) above are net charges borne by the State irrespectively of the fees received in the Courts, and are therefore excluded from the total against which the fees received should be set.

CIVIL JUDICIAL STATISTICS, 1923.

TABLE XX.—COUNTY COURTS.

(11) *Expenditure and Receipts (Fees).*

	1923. £	1922. £
EXPENDITURE:—		
(1) Salaries, Bonus, Pensions and Travelling Expenses of Judges	122,144	129,841
(2) Cost of Housing	58,328	59,616
(3) Rates on Buildings	15,222	15,497
(4) Salaries and Expenses of Registrars, High Bailiffs, Clerks, Bailiffs, and Ushers, and of Headquarters Staff	513,695	544,213
(5) Postage and Telephones	18,671	16,900
(6) Bankruptcy (Registrars' Remuneration) ..	15,122	14,499
(7) Companies (Winding up) (Registrars' Remuneration)	160	168
(8) Cost of Audit	200	200
(9) Stationery and Printing	§25,654	20,170
(10) Superannuation Allowances	1,769	1,828
	770,965	802,932
RECEIPTS:—		
(11) Fees Appropriated in Aid of the County Court Vote	*630,543	552,590
(12) Bankruptcy Fees	41,737	38,951
(13) Companies (Winding up) Fees	678	624
	672,958	592,165

§ This sum includes the initial cost of setting up and stocking forms on the termination of contracts.

* (11) £628,893 was taken in fees on proceedings in the Courts; the balance in the Registry of County Court Judgments.

(12) Fees taken in stamps issued by the Inland Revenue and paid over to the Treasury.

(13) Fees taken in cash in County Courts and paid over to the Treasury.

NOTE.—In the first account it will be seen that the relative burdens borne by the State and the suitor are explained, and that the net *cost* of the County Courts was £5,813.

The second account ignores the principle of the "net charges borne by the State." Had it been kept on the same principle as the first account, it would have shown a net *profit* of the County Courts as £97,687.

NOTES

CHAPTER I

PAGE	LINE	
2	6	Taylor's Case. I. Ventris Rep. 293.
4	4	Mithraism. The Literary Man's New Testament. Introduction XL. W. L. Courtney.
4	14	The Good News of God. Charles Kingsley. p. 43.
6	14	John Austin. Lecture II.
6	26	Lectures on Jurisprudence. The Mirror of Justices, with an introduction by Frederic William Maitland. Selden Society. Vol. 7. 1893. Bk. I. Ch. I.
8	3	—— —— Bk. IV. Ch. 16, of the Judgment of Homicide. p. 141.
8	23	The Drama of the Law. E. A. Parry. p. 67.
9	3	Howell's State Trials II. 913, 914.
9	9	The Mirror of Justices. Bk. V. Ch. I.
9	26	Lord Hewart's Speech to Manchester Accountants. *Times*, Oct. 1st, 1927.
10	4	English Civil Service in the Fourteenth Century. T. F. Tout. John Ryland's Bulletin. 1916. III. p. 185, 198.
13	23	Boswell's "Life of Johnson." Edited by Birkbeck Hill. II. 130. IV. 188.
14	20	Luke, XI, 46.
17	13	Shakespeare's Europe. Unpublished Chapters of Fynes Moryson's Itinerary, 1903. p. 67.
17	18	Trial of Richard Weston. Howell's State Trials. II. 914.
21	12	*Ecce Homo*. 5th Edition. 1867. p. 190. (This was written by Professor J. R. Seeley.)

CHAPTER II

PAGE	LINE	
23	7	*Apologia pro vita sua.* John Henry Cardinal Newman. Ch. I.
32	18	The Taming of the Shrew. I. 2.
33	9	Instincts of the Herd in Peace and War. 1916. p. 32. William Finlayson Trotter.
34	3	Memoirs of the Life of Sir Samuel Romilly. 1840. I. 78.
41	25	Bolshevist Russia. Karlgrest. 1927.
42	23	Jeremiah, XIII, 23.
44	28	Money Lenders' Act. See *Times*, Jan. 8th, 1900; *Financial News*, Jan. 9th, 1901; *Truth*, Jan. 17th, 1901. As to costs. See McCullagh, County Court Practice. 1890. p. 729.
47	9	Paradise Lost. I. 681.
48	9	Claim to Rents and Services by the Lord of the Manor of Wrotham. Bailey and Hopperton and others. 1913.
50	31	Departmental Committee on the Law and Practice of Juries. Vol. I. Report. 1913. (Cd. 6817.)
53	10	The Life and Opinions of Tristram Shandy. Ch. VII. Laurence Sterne.

CHAPTER III

56	10	Isaiah, XXX, 27.
56	19	The Victorian Chancellors. J. B. Atlay. 1906. I. 284.
57	23	Speeches of Lord Brougham. 1838. II. 389, 390.
58	19	—— —— p. 485.
59	4	—— —— pp. 487, 489.
59	19	The Evolution of the County Court. By His Honour Judge Sir Thomas Snagge, LL.D. p. 10.
61	23	—— —— p. 9.
62	11	Law Magazine. XLVI. p. 287.
62	19	Tomlin's Law Dictionary. Sub-title, "County Courts."
63	21	The Law and Practice of County Courts, particularly of the County Court of Yorkshire. By Robert Henry Anderson. 1830.
65	7	Snagge, on County Courts. p. 15.

PAGE	LINE	
67	7	Hansard. XVIII. 1833. p. 807 *et seq.* See too Vol. XIX. 1833. p. 357 *et seq.*
67	22	Civil Judicial Statistics. 1922.
68	2	Report of the Committee to Consider County Court Fees. 1923. par. 6.
70	18	Exodus, XVIII, 16—26.

CHAPTER IV

Imprisonment for Debt. The main authorities for the history of imprisonment for debt are the reports of the three commissions.

1840. Report of Commission on the Present State of the Laws respecting Bankrupts and Insolvent Debtors.

1893. Report of the Select Committee on the Debtors Act with Minutes of Evidence.

1909. Report of Select Committee on Debtors (Imprisonment) with Minutes of Evidence.

The Hansard Reports of the debates over the Bills of 1837, 1844 and 1869, contain many clear statements of the argument for, and against, abolition.

73	13	Memoirs of the Life of Sir Samuel Romilly. 1840. II, 331. III, 95.
73	18	Isaiah, III, 15.
76	2	II Kings, IV, 1—7.
77	10	A History of Greece. George Grote. 1862. Part II. Ch. II.
80	27	Hunter's Roman Law. 3rd Edition. p. 18.
83	6	Shakespeare's Europe. Charles Hughes. 1903. p. 162.
85	3	The Law of Executions. Lord Chief Baron Gilbert. 1763.
87	15	Boswell's "Life of Dr. Johnson." Edited by Birkbeck Hill. III. 77.
88	27	Isaiah, LXI, 1.
91	19	Lord Brougham's Speech. Hansard. 1837. Vol. 39. p. 574.

CHAPTER V

PAGE	LINE	
96	1	Select Committee on Debtors Act. 1893. p. 32.
100	9	*ibid*, p. 65.
100	17	*ibid*, p. 70.
101	6	Select Committee on Debtors (Imprisonment). 1909. p. 371.
102	8	*ibid*, p. 4.
102	15	*ibid*, p. 126.
105	14	Committee. 1909. p. 325.
105	14	Committee. 1893. p. 33.
105	16	Committee. 1909. p. 160.
105	21	*ibid*, p. 282.
105	25	*ibid*, p. 258.
107	32	Inquiries respecting the Insolvent Debtors Bill, with the opinions of Dr. Paley, Mr. Burke and Dr. Johnson upon Imprisonment for Debt. 1816. Basil Montagu.
109	31	Holy Living and Dying. A Prayer to be said by all Debtors. Jeremy Taylor, D.D. Edition. 1860. p. 160.

CHAPTER VI

There are many books on the Workmen's Compensation Act. That by the late Judge Elliott edited by Montague Berryman, 1925, is as comprehensive as any.
The Hansard Debates of 1879 and 1906 are historically interesting.

112	1	Mr. Asquith's Speech on Employers' Liability. 1893. Hansard. Vol. 8. p. 1948.
112	5	Fortnightly Review. July, 1900. p. 69.
121	15	Nature and Sources of the Law. John Chipman Gray. Sections 222—224.
125	15	See Tit. Collins, Richard Henn, D.N.B. 2nd Supplement. I. 389.
126	14	*Lowe v. Pearson.* Law Rep. [1899]. 1.Q.B. 261. *Smith v. Lancashire Yorkshire Ry. Co.* Law Rep. [1899], 1.Q.B. 141.
127	15	*Rees v. Thomas.* Law Rep. [1899]. 1.Q.B. 1015.
128	20	*Lysons v. Andrew Knowles.* Law Rep. [1901]. A.C. 79.

PAGE	LINE	
130	15	*Powell v. Main Colliery Co.* Law Rep. [1900]. 2.Q.B. 145 and A.C. 366.
131	28	*Fenton v. Thorley*. Law Rep. [1903]. A.C. 443.
133	2	*Dennis v. White*. Law Rep. [1917]. A.C. 479.
133	24	*Ryan v. Hartley*. Law Rep. [1912]. 2.K.B. 150.
135	9	*Williams v. Minister of Munitions*. 88.L.J. K.B. 1105.
135	25	*Haydock v. Goodier*. Law Rep. [1921]. 2.K.B. 384.
138	16	*Russell v. Rudd*. Law Rep. [1923]. A.C. 309.
140	20	Sub-tit. Parker, Robert John. D.N.B. 1912–1921. p. 421.
144	14	Fortnightly Review, November, 1925.
149	30	Workmen's Compensation Act. Statistics. 1925. p. 8.

CHAPTER VII

152	15	Tristram Shandy. Vol. VI. c. 8. Laurence Sterne.
156	21	*Times*. Nov. 10th, 1927.
160	11	See Commission of Enquiry into Industrial Unrest. Reports. 1917.
161	20	Parliamentary Debates. Nov. 21, 1916. Vol. 87. 1261–1378. Second Reading of Board of Pensions Bill.
162	1	*ibid*, III.
162	8	*ibid* 1274.
163	5	Parliamentary Debates. Mar. 26, 1917. Vol. 92. c. 658.
164	5	For account of work of this Tribunal see War Pensions Past and Present, by Judge Parry and Lt.-General Codrington.
172	15	Job IX, 33.
174	30	Rules and Orders. 1919. II. 244.

CHAPTER VIII

179	24	Letters of Lord Chesterfield. 1913 Edition. III. 958.
181	20	M. Cary, M.A. The Civil Service in Ancient Civilisation, The Development of the Civil Service. 1922. pp. 2—6.
182	15	Genesis. XLI, 8.
183	7	Genesis. XLI, 38.

PAGE	LINE	
184	7	Essays of Joseph Mazzini. 1887. Faith and the Future. p. 10.
184	18	England's Elizabeth. Act III.
185	8	Life of Sir Rowland Hill and History of Penny Postage. Sir R. H. and G. B. Hill. 1880.
195	28	Little Dorrit. Book I. Ch. 10.
196	6	Inside a Government Office. Sir Stephen Demetriadi, K.B.E. 1921. p. 46, p. 49, p. 48.
196	26	Ninth Report, Ministry of Pensions. 1926.
197	12	Demetriadi. p. 48.
200	13	The Life of Gladstone. John Morley. Book VI, Ch. 8.
207	1	Select Committee on National Expenditure. Third Report. (Of Session 1918.)
208	2	Inside a Government Office. Sir Stephen Demetriadi. K.B.E. 1921. p. 28.
211	24	St. John XII, 6.
213	14	Byron. Childe Harold's Pilgrimage. Canto, I. St. 9.
213	15	*Boardman v. Minister of Agriculture. Times.* Mar. 10, 1925.
214	33	*Marshall Shipping Co. v. Board of Trade. Times* Law Reports. XXXIX. 415.
215	5	*Rex v. Board of Education.* [1910]. 2.K.B. 177.
216	3	*P.M.G. v. Liverpool Corporation.* 1928. A.C. 594.
217	2	Public Authorities and Legal Liability. Gleeson, E. Robinson, M.C., LL.D., with an introductory Chapter on Remedies against the Crown. By J. H. Morgan, M.A., Professor of Constitutional Law, University of London. 1925. p. LXV.
		Note.—Professor Morgan's Chapter is a brilliant essay on departmentalism and the law, to which I am greatly indebted and which everyone who is interested in the subject should study carefully.
217	25	The Genius of Common Law. Sir Frederick Pollock. 1912. p. 43.

CHAPTER IX

PAGE	LINE	
		The chief authority for this Chapter is the Report of the Royal Commission on Divorce and Matrimonial Causes, and the three volumes of evidence and the Appendix cited below as D.C.
219	10	D.C. Report. p. 36.
219	18	See D.C. Appendix. pp. 22—26, and Vol. III. pp.42—58.
221	34	D.C. Appendix. p. 13.
222	7	Paris Rosemary. By Sir John W. Simpson, K.B.E. 1927. p. 127.
223	31	Howell's State Trials. Vol. 13. 1334.
224	25	D.C. Report. p. 91.
224	34	D.C. Vol. I. p. 52.
225	13	D.C. Vol. I. p. 260.
226	1	D.C. Vol. I. p. 260.
227	14	D.C. Report. p. 69.
227	18	D.C. Vol. III. p. 307.
227	20	The Evolution of Marriage. Ch. Letourneau. 1891. p. 245.
228	11	Letourneau. p. 257.
229	7	Mother India. Katherine Mayo. 1927. p. 73.
230	31	The Victorian Chancellors. By J. B. Atlay. II. 71.
235	15	D.C. Vol. II. p. 141.
235	21	D.C. Vol. II. p. 99.
237	20	Misleading Cases in the Common Law. Reported by A. P. Herbert. 1927. p. 57.
239	17	D.C. Report. p. 179.
240	33	D.C. Vol. II. p. 390.
241	23	D.C. Vol. II. p. 390.
244	13	D.C. Report, p. 176.
247	3	15 and 16. George V, c. 49. 176.
247	28	Mother India. By Katherine Mayo. p. 43.
248	26	D C. Vol. I. p. 49.
249	12	D.C. Vol. II. p. 390.
250	4	D.C. Vol. II. p. 391.
211	20	D.C. Vol. II. p. 391.

PAGE	LINE	
252	31	Michel de Montaigne. Essays. Translated by Charles Cotton. Bk. II. Ch. 15.
254	18	Selden's Table Talk. LXXXIV.
255	6	D.C. Report. p. 37.

CHAPTER X

257	13	Old Curiosity Shop. Ch. XIX.
258	31	Piers Plowman's Vision. Everyman Library. p. 20, p. 43.
260	12	II. Samuel XV, 4.
263	1	Piers Plowman. p. 48.
263	12	Poverty and Civil Litigation. J. M. Maguire. Harvard Law Review. Feb. 1928.
263	29	Sydney Smith. "Counsel for Prisoners." *Edinburgh Review*, 1826.
264	8	Thackeray. "The Case of Peytet." Paris Sketch Book.
264	20	Committee on Legal Aid for the Poor. First Report. 1926. par. 14.
269	6	Report of Royal Commission on Divorce. 1912. p. 44. par. 69.
269	25	Poor Persons', Rules Committee Report. 1925.
272	17	Law Journal. Mar. 7, 1925.
273	11	Committee on Legal Aid for the Poor. Final Report. 1928.
274	18	2 Henry VI, iv. 2.
275	20	Elliott's Workmen's Compensation Act. Eighth Edition. 1925. By Montague Berryman.
278	6	"A Letter to Garcia." Elbert Hubbard. p. 37.
279	23	General Council of the Bar. Annual Statement. 1927.

CHAPTER XI

281	2	Marcus Aurelius. "Meditations." Bk. IV. par. 31.
289	30	Danish Conciliation System and Conciliation in Norway. R. Heber Smith. Monthly Labour Review. May and June, 1926. Washington Government Printing Office.

PAGE	LINE	
290	31	Matthew V, 25.
293	1	Heber Smith. p. 48.
293	15	How France is Governed. Raymond Poincaré. Trans. Bernard Miall. Ch. X. Justice. p. 244.
296	1	Pippa Passes. Robert Browning.

INDEX

Abinger, Lord, judgment of in Priestley case, 118–119, 122, 139, 141
Absalom, saying of, 260
"Accident," definition of term as used in Workmen's Compensation Act, 131–132
Affiliation cases, 266
Agriculture, Ministry of, Case of *Boardman v. The Ministry*, 213–214
Air Ministry, Loch Doon scheme abandoned by, 206
Alice through the Looking Glass (Carroll), quoted, 244
Althorp, Lord, introduction of local courts desired by, 54–55
Anderson, Mr., cited on York County Court, 63
Angliæ Notitiæ, 1687, quoted on a proctor's costume, 234
Anglican Church, *see under* Church of England
Apologia pro vita sua (Newman), 23
Appeal, Courts of, interpretation of Workmen's Compensation Act by, 116, 124–138, 143, 144, 275; decisions of, on and in: contributory negligence, 126, scope of employment, 127, special risk, 127, emergency, 128, *Lysons v. Knowles*, 128–129, six months' limitation, 129–131, meaning of "accident," 131–132, street risks, 132–133, contracting out, 132 *et seq.*, *Ryan v. Hartley*, 133 *et seq.*
Arabin, Serjeant, 114
Army and Navy Councils and War Pensions, 154
Askwith, Lord, labour conciliation work of, 36, 156–157
Asquith, H. H. (later Earl of Oxford and Asquith), definition of Workmen's Compensation Bill by, 111–112
Athanasius, St., Creed of, 3
Athens, Solon's abolition of imprisonment for debt in, 79–80, 108
Atkin, Lord Justice, on "Contracting out" decisions under Workmen's Compensation Act, 135
Atlay, Mr. J. B., Essay on Lord Brougham by, 56; quoted on Richard Henn Collins, 125
Aurelius, Marcus, 281, 284
Austin, John, 6

Bacon, Francis, on Time, 283
Bailey v. Hopperton, the rights of a Court Baron, 48 *et seq.*
Ballantine, Serjeant, 26
Bar Council, the, and legal aid for the poor, 279–280
Barnes, Rt. Hon. George, 160, 161; as Minister of Pensions, 164–165
Beaconsfield, Lord, on Silence, 277
Bedwell, Judge, on imprisonment for debt, 100, 103
Belgium, divorce law in, 253–254
Bellamy, Albert, C.B.E., member of Pensions Appeal Tribunal, 164, 165
Bentham, Jeremy, 56

Bertha Big-foot, separation of, from Robert the Pious, 222
Bias, effect of, on judicial decisions, 141–143
Bigamy, judicial attitude to, 232
Birkenhead, Earl of, 60; on a case of Post Office "bluff," 216; on the Divorce laws, 254
Birmingham County Court, 95
Blasphemy, punishment for, 2, 12
Bodkin, Sir Archibald, on the necessity for legal aid to prisoners in the police court, 264
Bolshevist Russia (Karlgrest), quoted on bureaucracy, 41
Boswell, James, 13; on the debtor laws of Scotland, 87
Bovill, 26
Bowls, Game of, use of bias in, 141–142
Bracton, 63
Bramwell, Baron, against imprisonment for debt, 96
Britton, 63
Brougham, Lord, legal reforms of, 55–62, 283; his ideal of free courts, 66 *et seq*, 70; against imprisonment for debt, 88, 91–92; Conciliation Courts suggested by, 58, 59, 285, 294
Browne, Sir Thomas, 1
Bryce, Mr. (afterwards Lord), 27
Buckmaster, Lord, Bill for Divorce reform introduced by, 247
Bureaucracy (*see also under* Civil Service *and* Treasury); Andrew Horn's protest against, 9 *et seq.*; Professor Tout on Mediæval, 10–11; inertia of, 34, 40 *et seq.*; contest between the judiciary and, 114–115, 143–144, 179, 256–258; administration of social schemes by, 143–144, 150–151; and War Pensions, 153 *et seq.*, 162, 166–167, 169–171; industrial hostility to, during the War, 158–161; difficulty of obtaining justice from, 175; irresponsibility and indecision of, 179–180, 203, 212–213; through the ages, 177, 180 *et seq.*; power of caste and tradition in, 180–181; in Ancient Egypt, 181–184; Rowland Hill's fight against, 185–195; its aversion from publicity, 189–190, 192–193; desire for judicial rights by, 216–217, 294; need for reform of, 282–283
Buxton, Sydney (later Lord), 35

Cade, Jack, and lawyers, 174
Cambrian Plutarch, The (J. H. Parry), 24
Capital punishment for theft, 73
Carlyle, Thomas, on History, 75
Carnarvon, Institution of the Prince of Wales at, 38
Cary, Mr. M., cited on bureaucracy in Ancient Egypt, 181
Cash-trading, benefits of, 106–108
Cave, Mr. Justice, and the Jackson Case, 8
Cavendish, Lord Richard, President of Development Commission, 209
Chalmers, Judge, on the working of the Debtors' Act, 1869, 95–96, 100
Chamberlain, Joseph, and the Workmen's Compensation Act, 111 *et seq.*, 126
Chelsea Commissioners and War Pensions, 154, 162, 173, 174, 176
Chester Courant, J. H. Parry's contribution to, 24
Chesterfield, Lord, example of departmental indecision given by, 179
China, officialdom in, 180–181
Christian VII, Conciliation Act, 1795, in Denmark established by, 291

Christian Churches, attitude of, to indissolubility of marriage and divorce, 219, 222 *et seq.*, 227, 236, 238–240, 247–248, 250, 252, 253
Christianity and the Gospel, differentiated, 2
Church of England, attitude of, to imprisonment for debt, 88; to divorce, 219, 222–223; *see also under* Christian Churches *and* York, Archbishop of
Church of Rome, *see* Roman Catholic Church
Circumlocution Office, the, in *Little Dorrit*, 195–196
City Compters' Prison, 88
Civil Engineers, Institute of, 207
Civil Services (*see also under* Bureaucracy *and* Treasury); in the 14th century, 10, 11; history of, 175; power of caste and tradition in, 180; unable to cope with emergencies, 181, 208; compared with those of Ancient Egypt, 181–184; patronage in, 184–185, 195, 199 *et seq.*; tradition of secrecy in, 192–193, 204; reforms for: report by Sir Stafford Northcote and Sir Charles Trevelyan, 1853, 195, proposals by Sir Stephen Demetriadi, 198, and Gladstone, 200–201, by decentralisation, 201–203, by use of lay experts, 207–210; competitive examinations for, 199; "the barrier" in, 199–200; evils of centralisation in London, 201–203; irresponsibility of, 203–204; doctrine of infallibility in, 205 *et seq.*; effect of Treasury control on, 210–213; examples of defence behind technicalities by, 213–216; seeking of semi-judicial powers by, 216–217
Clynes, Mr. J. R., member of N.W. England Industrial Unrest Commission, 1917, 158
Codrington, Lieut.-General Sir Alfred, K.C.V.O., member of Pensions Appeal Tribunal, 164 *et seq.*; report on work of Tribunal by, and Sir E. Parry, 174
Coke, Lord Chief Justice, approval of Andrew Horn's *Mirror of Justices*, 7; trial of Richard Weston by, 17–18
"Colin to Chloe" (J. H. Parry), 24
Collins, Richard Henn, Workmen's Compensation Act, decisions of, 124 *et seq.*, 128, 129, 132
Commissions, intelligence of, 51
Conciliation, principle of, in the railway industry, 53, *et seq.*; in divorce proceedings, 221; legal antagonism to, 277
Conciliation Act, 1896, 35
Conciliation Courts, Lord Brougham's suggestions for, 58, 59, 285, 294; in Denmark, 285, 289–293; in U.S.A., 285; suggested for England, 285–289, 291–292, 293–296; in Norway, 292, 293
"Contracting out" under the Workmen's Compensation Act, 133–138
Copenhagen Municipal Court, conciliation cases in, 292
Cottenham, Lord, County Courts established by, 62; Statute for Abolition of Imprisonment for Debt on Mesne process introduced by, 90–92
County Court Act, 1846, 62, 63
County Court Judges, inadequate remuneration of, 113; varied experience of, 274–275, 281–282
County Courts, the, purpose of, and method of procedure in, 28–30; use of juries in, 30; housing of, 37 *et seq.*; jurisdiction of, 49–50, 64–65; Lord Althorp's Bills for introduc-

tion of, 54–55; Lord Brougham's Bills for introduction of, and Lord Lyndhurst's attitude to, 59–62; ancient origin of, 62–64; Lord Cottenham's Act for establishment of, 1846, 62; popularity of 66;, fees in, 66–67; revenue and expenditure of, 67–70, and Append. A., future of, 71; process for recovery of debt in, 94 *et seq.*, and effect on credit trading, 96 *et seq.*; arbitration under Workmen's Compensation Act by, 111, 113, 128, 134–135, 139, 140, 143, 150, 151, 275 *et seq.*; legal aid to poor persons in, 272–274; cases under Rent Restriction Acts in, 275 *et seq.*

Court Baron, county court cases regarding quit rent claims of, 47 *et seq.*

Court of Criminal Appeal Act, 1907, 264

Courts of Appeal, *see* Appeal, Courts of

Cozens, Bishop, on divorce *a mensa et thoro*, 223–224

Cranmer, Thomas, divorce proposals of, in *Reformatio Legum Ecclesiasticarum*, 219–223, 230, 239, 242

Credit and Credit-trading, Lord Brougham on, 91; effect of Debtors' Act, 1869, on, 94 *et seq.*; Judge Chalmers on, 96, 100; fostered by County Court machinery for debt collection, 97 *et seq.*; disadvantages of, to trader and consumer, 106–108; Dr. Johnson quoted on, 107–108

Crimean War, failure of bureaucracy during, 198, 199, 204

Criminal Appeal Act, 1907, 264

Crown, the, preferential position of, in law, 9, 216; and necessity for abolition, 216–217

Curia Comitatus, the ancestor of the County Court, 62–63

Davey, Lord, on Workmen's Compensation Act, 111, 129

David, King, and Uriah, 260

David Copperfield (Dickens), 234

Davies, Mr. Ellis, 51

Deane, Mr. Justice Bargrave, on Separation Orders and Divorce for the poor, 224–225, 245, 248

Debt, imprisonment for, a relic of slavery, 72–75; Commissions on, 74, 1839—92, 1903—100, 1908—101, and approval by, 74; abolished in Scotland, 1880, 75; historic examples of protest, Elisha, 75–76; Solon, 77–80, 82; Roman law regarding, 80–83; in the Papal State, 1594, 83, 84; in England not before Henry III's reign, 84–86; on Mesne process, 87, 100; protests against, at end of XVIII century, 88–89; Lord Cottenham's Bill for Abolition, 90–92, and Commission on 1839, 92; effect of *Pickwick Papers* on, 90; Debtors' Act 1869, for abolition of, 92–93, does not abolish, 94; fosters credit-trading among the poor, 95 *et seq.*; opinions on, of Judges Chalmers, 96, 100, Bedwell, 100, and Stonor, 100; general abolition of, in France, Scotland, America and Germany, 105; arguments for abolition of, 105–110

Debtors, and the Money Lenders' Act, 1900, 44 *et seq.*; prison status of, 102; treatment of, in France, Scotland, America and Germany, 105; obligations of, 109–110

Debtors' Act, 1869, legal history of, 86, 92–93; imprisonment for debt possible under, 94, 100; credit-trading fostered by, 96 *et seq.*

Demetriadi, Sir Stephen, experiences of departmentalism in Ministry of Pensions, 196, 208
Denmark, Conciliation Courts in, 285, 289–293
Departmental English, 197–198
Departmentalism, *see under* Bureaucracy
Desart, Lord, quoted on office of King's Proctor, 235
Development Commission, 209
Dickens, Charles, quoted on Proctors, 234, 235
Divorce, Royal Commissions on: 1909—219, 226, 227, 238, 239, 242–246, and reforms suggested by, 246, 247, 251, 254, 255, 266; 1850, resulting in Divorce Act 1857, 233; attitude of Christian Churches to, 219, 222 *et seq.*, 227, 236, 238–240, 243 *et seq.*, 247–248, 250, 252, 253; Cranmer's proposals regarding, 219–223, 230, 239, 242; Scottish law of, 220; *a mensa et thoro* (Judicial Separation), 221–227; Judge Maule's comments on law of, 230–233; function of King's Proctor in, 233–236; ease of, for the rich, 236–237, 266, 267, and necessity of, for the poor, 240–244, 248–252, 255, 266, 267; typical cases showing need for reform in law of, 240–242, 249–250, 251–252; Judicature Act, 1925 and, 247; effect of extended facilities for, on morality, 252–253, 255; in Belgium, 253–254; statistics of, 267–268; under Poor Persons' Rules, 267–269; cost of action for, 269
Divorce Act, 1857, 233, 239
Divorce Court: the result of Divorce Act, 1857, 233; effect of its being in London, 233, 242, 266; cases sent to Assizes, 269, 270
Divorce Court Bar, monopoly of, 233, 266
Doon, Loch, projected aerial gunnery school at, 1916, 205–207
Drunkenness, a ground for divorce, 246, 251; effect of, on married lives of poor, 249–250

Ecce Homo (Seeley), quoted on Christ's commands for the present age, 21
Edinburgh, inscription in the old prison at, 72
Education, Board of, Lord Justice Farwell's comment on *Rex v. Board of Education*, 215
Egypt, Ancient, Civil Service in, 181; and Joseph's relations with, 182–184
Elisha increases the widow's oil, 75–76
Elliott, Judge, "Workmen's Compensation Act" by, 132; appointed for War Pensions appeals, 173
Emperor's New Clothes, The (Andersen), 205
English, official, obscurity of, 197–198
Exekestides, father of Solon, 77
Experience, Trotter on, 33

Farwell, Lord Justice, comments of, on *Rex v. The Board of Education*, 215
Fawkes, Admiral Sir Wilmot, G.C.B., K.C.V.O., member of Pensions Appeal Tribunal, 164
Fielding, description of debtors' miseries by, 88
First Principles (Spencer), quoted on evolution, 54
Fisher, Mr. Hayes, takes up War Pension question, 153–154; Ministry of Pensions Bill brought in by, 161–163
Fleet Prison, the, 88; account of in *Pickwick Papers*, 90
Fleta, 63–64

Food Ministry, 183–184
Forster, Mr., Financial Secretary to War Office, on War Pensions, 162–163
France, treatment of debtors in, 105; criminal court procedure in, 265; Conciliation Courts in, 285, 293
Fraser, Lord, on Divorce law in Scotland, 226
Frederick William, Prince, christening of, 179
Fry, Elizabeth, prison reform of, 88

Gallio, 4
Genesis, Book of, 182–183
George, Mr. David Lloyd, 156; appoints Commission of enquiry into Industrial Unrest during the War, 157–161
Germany, treatment of debtors in, 105
Gladstone, W. G., proposals for, Civil Service reform by, 200
Glanville, 63
Golden Bough (Frazer), 3
Goldsmith, Oliver, outlook of, on the English legal system, 14
Gospel, the, general principles of, governing the treatment of the poor in law, 1–6, 11, 20–22, 72–73, 110, 176–177, 212, 218, 226, 239, 245, 246, 254, 255, 262, 283–284, 290, 295
Gray, John Chipman, on judge-made law, 121
Gray's Inn, Moot at, Workmen's Compensation problem set by Sir Edward Parry at, 136–138
Great European War, 1914–1918, effect of, on imprisonment for debt, 94, 103; food distribution during, 159, 183–184; Pensions, *see under* War Pensions
Greek Church, attitude of, to Divorce, 222, 224
Gregory, V, annulment of marriage of Robert the Pious by, 222
Grote, cited on Solon, 77, 78, 80

Hale, Sir Matthew, on Christianity and the Law, 2; and Taylor's Case, 12
Hall, Thomas, bigamy case of, 230–233
Halsbury, Lord, judgment of, in the Jackson case, 8–9; payment of Jewish interpreter by Treasury approved by, 44; on Workmen's Compensation Act cases, 111, 129, 130–131, 275
Hampden, John, 185
Hardy, Sir H. H. Cozens, Master of the Rolls, 135
Hawkins, Mr. Justice, 26
Hell, Swedenborg on, 15
Herschel, Lord Chancellor, 43
Hewart, Lord, 60; on departmental edicts, 9
Hill, Matthew, letter to his brother, Rowland Hill, on Post Office antagonism to reform, 190–191
Hill, Sir Rowland, career of, and his fight against departmentalism, 180, 185–195
Hill, Thomas Wright, father of Rowland Hill, 186–187
Hillel, Rabbi, 43
Hindu Marriage, indissolubility of, 228–229, 245, 247–248
History, teaching of, 181
Hodge, Mr. John, Minister of Pensions, 1918, 173
Home Office and Workmen's Compensation Act, 148, 149
Hopwood, Charles, Recorder of Liverpool, legal reforms by, 34
Horn, Andrew, *Mirror of Justices* by, 6–12, 19
House of Lords, decisions of, in Workmen's Compensation Act. Cases: *Lysons v. Knowles*, 129; Six Months' Limitation, 129–131; Meaning of "Accident," 132; Street Risks, 132; Contracting-out, 138 *et seq.*; general bias of, for the Act, 143, 275

Howard, John, prison reform of, 88
Hubbard, Elbert, on the U.S.A., 278
Hulton, Sir Edward, 52
Husband and Wife, common law regarding, 8–9, *see also under* Divorce, Marriage *and* Separation

Imprisonment for debt, *see under* Debt
Income Tax for weekly wage earners, 104
Industrial Unrest Commissions, 1917, 157–161, 183
Insanity as a ground for divorce, 246, 251–252
Insurance Companies and the Workmen's Compensation Act, 123–124, 133 *et seq*, 143, 148, 150, 177
Interpreters, Yiddish, in County Courts, 42 *et seq*.

Jackson Case, the, 8–9
James, Lord of Hereford, and the Money Lenders' Act, 1900, 44 *et seq*.
Jerome, St., attitude of, to divorce, 227
Jessel, Sir George, on the Debtors' Act, 1869, 94, 96
Jethro, advice of, to Moses on decentralisation, 70
Jeune, Mr. Justice, and the Jackson Case, 8
Jews, interpreters for County Court Cases relating to, 42 *et seq*.
Job, Book of, 185, 194–195
John, St., 14; and Judas Iscariot, 211, 212
Johnson, Dr. Samuel, attitude of, to condition of the poor, 13; his jests against Scotland, 87; on credit, 107–108
Joseph, in Egypt, an example of departmentalism defeated, 180
Judas Iscariot, type of the departmental mind, 211–212
Judgment summonses for debt 94 *et seq*.; statistics of trades using, at Manchester, 98
Judicial Separation, *see under* Separation
Judicial Statistics, excellence of, in 1912, 51; present day inefficiency of, 65–66; *see also under* Statistics
Judiciary, the, attitude to Acts of Parliament by, 114; interpretation of, and origination of law by, 115–123
Juries, use of in County Courts, 30; Departmental Committee on the Law and Practice of, 1912, 50 *et seq*.
Justice and the Poor (R. H. Smith), 278

Katawampus (Sir E. A. Parry), 46
Kent, Assize and County Court business in, compared, 66
King, the, as a law maker, 260–261
King's Bench Prison, the, 88
King's Proctor, the, 233–236
Kingsley, Charles, quoted on Roman and Christian righteousness, 4

Lambeth County Court, Judge Parry's work at, 29 *et seq*., 37, 176; bad housing of, 37–38; visit of Danish lawyers to, 290
Lancashire, industrial unrest in, 1917, 158–161
Law *v*. bureaucracy as the better servant, 114–115, 143–144, 179, 256–258; judge-made, 119–123; public confidence in, because administration open, 190
Law, Bonar, and War Pensions, 163, 168
Law Journal, on lawyers' monopoly and obligations, 272
Law Quarterly, on jurisdiction of the County Court, 65

Law Society, organisation of legal aid for poor persons by, 271–272, 280
Lawrence, Mr. Justice P. O., Chairman of Commission on Poor Persons' Rules, 270
Lawyers, Scriptural references to, 14–15; herd instinct in, 31–32; monopoly and consequent obligations of, 261, 271–272, 280, 285; opposition of, to conciliation, 286
Leading Cases (Smith), 117
Legal Aid for the Poor, need for, 258–260; in Civil cases, 262, 266 *et seq.*; official opposition to, 263; in Criminal cases, 263 *et seq.*; Report of Committee on, 272–277, 290; Conciliation the best means, 277; in U.S.A., 278–279
Legal Reform, lawyers' conservatism and opposition to, 32 *et seq.*, 52; Charles Hopwood and, 34; articles on, by Judge Parry in the *Sunday Chronicle*, 53; Lord Brougham's work for, 55–62; Lord Lyndhurst's Commissions on, 57 *et seq.*
Lewis, Sir George, on the principle of competition, 199
Lindley, Lord, on *Lysons v. Knowles*, 129
Lister, Registrar, death of, 39
Little Dorrit (Dickens), 195–196
Local Judicatures, Brougham's Bills for establishment of, 59–61
London, effect of centralisation of Civil Services in, 201–203; effect of Divorce Court being in, 233, 242, 266
Luke, St., quoted, 281
Lush, 26
Lyndhurst, Lord, on cheap law, 54; legal reform commissions appointed by, 57 *et seq.*; attitude of, to County Courts and decentralisation, 59–62, 65, 70; attitude of, to abolition of imprisonment for debt, 91
Lysons v. Knowles, case of, 128–129; cost of, 139

Maberley, Colonel, antagonism of, to Rowland Hill's scheme of Post Office reform, 189, 191–192, 194
Macaulay, Lord, quoted on English law, 56
Macdonald, Mr., secretary to N.W. England Industrial Unrest Commission, 1917, 158
Macdonell, Sir John, C. B., LL.D., editor of Judicial Statistics, 51
McDonnell, Sir Schomberg, 38
McKenna, Mr. Reginald, Home Secretary, 50
Mackintosh, Sir James, 55
Maguire, John MacArthur, on legal aid to the poor in U.S.A., 263, 279
Maitland, Professor, on Andrew Horn, 7; quoted on Divorce, 221–222
Manchester County Court, Judge Parry's work at, 27 *et seq.*, 140; drainage at, 39; operation of Debtors' Act at, 95; statistics of judgment summonses at, 98
Mansfield, Lord, decree on Slavery by, 9
Marlbridge, Statute of, 52 Henry III c. 23, 86
Marmion (Scott), quoted, 23
Marriage, Christian doctrine of indissolubility of, 223 *et seq.*, 245 (*see also under* Divorce), under Hindu law, 228, 245 247–248, 250; Montaigne on; 252–253; Selden on, 254
Marshalsea Prison, the, 88
Martin Chuzzlewit (Dickens), quoted, 244
Massachusetts, courts of, 263
Matthew, St., quoted, 94
Maule, Mr. Justice, speech of, in the bigamy case, *Regina v. Thomas Hall*, 230–233

Mazzini, Joseph, quoted on progress, 1, 184
Meeson and Welsby, Priestley case from, 117–119
Merchant of Venice (Shakespeare), debtor and creditor law in, 81–82
"Meritorious," use of word in recommendation of Poor Persons' Rules Committee, 270–271
Mesne process for recovery of debt, 87; abolition of, 90–92, 100
Mesnil, M. Henri, on divorce law in Belgium, 253
Mersey, Lord, President of Departmental Commission on the Law and Practice of Juries, 1912, 50, 52
Micawber (*David Copperfield*), imprisonment for debt of, 87
Miners' Union, the, cost of Lyson's case to, 139
Ministry of Pensions, *see* Pensions, Ministry of
Mirror of Justices (Horn), 6 *et seq.*
Misleading Cases (A. P. Herbert), quoted, 237
Mithraism, 4
Money Lenders' Act, 1900, effect of, on poor debtors, 44 *et seq.*
Montaigne, quoted on Marriage, 252–253
Moore, Norman, M.D., member of Pensions Appeal Tribunal, 164, 171–172, 174
Moot at Gray's Inn, *see under* Gray's Inn
Morgan, Professor, on the legal position of the Crown, 217
Moryson, Fynes, on Turkish cruelty, 17; on treatment of debtors in the Papal State, 1594, 83, 84
Morning Post, J. H. Parry's contributions to, 24
Moses, Jethro's advice to, on decentralisation, 70; defeats departmentalism, 180
Mother Hubberd's Tale (Spenser), quoted, 152
Mother India (K. Mayo), 229

National Expenditure, Select Committee of, on the Loch Doon scheme, 206–207
National Insurance, doctors' antagonism to, 91
Newman, Cardinal, on personal disclosure, 23
Norfolk, Duke of, 1700, Divorce Bill of, 223
Northcote, Sir Stafford, Report on Civil Service by, 1853, 195
Norway, Conciliation system in, 292–293

Office of Works, the, 38 *et seq.*
Ontario, Workmen's Compensation Scheme in, 144–151
Origin of Species (Darwin), 3
Ostenfeld, Mr. George, on Danish Conciliation methods, 290
Overbury, Sir Thomas, murder case of, 17

Padmapurana, duties of a wife quoted from, 229
Palmer, Mr. Freke, on the office of King's Proctor, 235
Panizzi, Sir A., 25
Parker, Lord, on parallelism of judicial and political opinion in a Workmen's Compensation case, 140
Parmiter, Mr., solicitor to Lancashire and Yorkshire Railway Co., 35–36
Parmoor, Lord, decision of, on "Street risks," in Workmen's Compensation Act, 133
Parry, Serjeant, career and opinions of, 25–26
Parry, Rev. Edward, 23
Parry, Sir Edward A., education and legal career of, 26–27; appointed County Court judge at Manchester, 27; attitude of,

to County Court procedure, 28 *et seq.*; interest in and articles on legal reform, 32–33, 52–53; chosen independent chairman by seven railways under Conciliation Act, 1896, 35; other conciliation work of, 36–37; at Lambeth County Court, 37; criticism in *The Times* of Money Lenders' Act, 1900, by, 44 *et seq.*; researches of, into rights of Court Barons, 47–50; sits on Departmental Committee to consider Law and Practice of Juries, 50–52; decisions of, under Workmen's Compensation Act, 128–129, 134–135; Grays' Inn Moot presided over by, 136–138; chairman of Conscription Appeal Tribunal, 152; suggestion by, on War Pension scheme, 154; incident of, and Treasury auditor regarding "apportionment," 155–156; Chairman of Industrial Unrest Commission for N.W. England, 157–161, 183; President of War Pensions Appeal Tribunal, 157, 161, 163–174

Parry, John Humffreys, 23 *et seq.*

Patriotic Fund Corporation and War Pensions, 154

Patronage in the Civil Service, 184–185, 195, 199 *et seq.*

Pecksniff, Mr. (*Martin Chuzzlewit*), 244

Peine forte et dure for refusal to plead, 17–18

Pensions, Ministry of: origin, duties and powers, 161–163; attitude to Pensions Appeal Tribunal, 167 *et seq.*, 172, 173, 177, 178; irresponsibility of, 174, 175; Sir Stephen Demetriadi's experience in, 196–197

Pensions, War, *see under* War Pensions

Pharaoh's dream, 182–184

Pharisees and Pharisaism, 14 *et seq.*

Pickwick Papers (Dickens), influence of, in debt imprisonment reform, 90

Piers Plowman (Langland), quoted on Law and the Poor, 258–260, 262–263

Pippa Passes (Browning), quoted, 295–296

Poincaré, M. Raymond, on conciliation methods in France, 293

Police Courts, necessity for legal aid in, 264; affiliation cases in, 266

Pollard, Bilton, F.R.C.S., member of Pensions Appeal Tribunal, 164, 171–172, 174

Pollock, Sir Frederick, verse of, 117; quoted on Divorce, 221–222

Poor, the, and the Law, Judge Parry's articles in *Sunday Chronicle* on, 52–53, legal aid for, *see under* Legal Aid

Poor Men's Courts, County Courts as, 31, 58, 66 *et seq.*

Poor Person's Rules, 267, 269; Committee on, 269, and recommendations of, 270–272

Poor Prisoners' Defence Act, 1903, 264

Postage stamps, introduction of, by Rowland Hill, 188

Post Office, Rowland Hill's reform of, 188–195; bluff of, in action against Liverpool Corporation, 216

Poverty and Civil Litigation (Maguire), quoted on law and the poor, 263, 279

Priestley, compensation case of, 117–119, 122, 139, 141

Primitive Paternity (Hartland), 3

Primrose, Mr. H. W., C. S. I., 40

Proctors, 234

Progress, Mazzini quoted on, 1, 184

Public Defender, need for office of a, 265

Public Works Loan Board, 209

Punch, Misleading Cases (A. P. Herbert) in, 237

Railway industry, Conciliation scheme for, 35 *et seq.*
Reform, legal, *see under* Legal Reform
Reformatio Legum Ecclesiasticarum (Cranmer), 219
Rent Restriction Acts, intricacy and obscurity of, 197, 276–277; Departmental Committee on, 277; Conciliation suggested for cases under, 291–292
Rhondda, Lord, Food Minister, 184
Ridley, Sir Matthew White, introduction of Workmen's Compensation Bill by, 112–113
Robert the Pious, separation of, from Bertha Big-foot, 222
Roman Catholic Church, attitude of, to divorce, 222 *et seq.*, 227; *see also under* Christian Churches
Roman Law, as base of English law, 19–20, 80, 82–83; regarding debtors, 80–83
Romilly, Sir Samuel, legal reform advocated by, 34, 55; protest by, against imprisonment for debt, 88
Russell, C. A., 138
Ryan v. Hartley, "contracting out" case under Workmen's Compensation Act, 133, 135, 138

Sacrament, the term, 3
Salvesen, Lord, on Separation and Divorce, 225
Sartor Resartus (Carlyle), quoted on the Spirit of Religion, 218
Scarlett, James, Baron Abinger, judgment of, in Priestley case, 118–119, 122, 139, 141
Scienter, example of, 288–289
Scotland, treatment of debtors in, 105; Divorce law in, 220, 225–226, 230, 235
Scott, Sir Walter, 13
Scott-Moncrieff, Sir George, warning by, on Loch Doon scheme, 206
Scribes, the, 14, 15
Selden, John, on Marriage, 254
Separation *a mensa et thoro* (*see also under* Divorce), Cranmer's denunciation of, 221–224; origin of, 221–224; evil of, 224–227, and evidence of Divorce Commission on, 242–244; Archbishop of York's opinion of, 239, 243
Shand, Lord, on "accident," 132
Shee, 26
Shylock (*Merchant of Venice*), case of, considered in light of Roman law on debts, 81–82
Slavery, Lord Mansfield's decree on, 9; incompatible with Gospel teaching, 72–74
Smethurst, Mr. John, member of N.W. England Industrial Unrest Commission, 1917, 158
Smith, A. L., Workmen's Compensation Act decisions of, 124, 125, 127–128, 129–130
Smith, F. E. (Lord Birkenhead), 60
Smith, Reginald Heber, on legal aid for the poor in U.S.A., 278–279; on Danish Conciliation Courts, 290
Smith, Sydney, legal aid for prisoners advocated by, 263
Smollett, Tobias, description of debtor's miseries by, 88
Snowden, Mr. Philip, 51
Solicitors, speculative, 275–276
Solon, abolition of imprisonment for debt by, 77–80, 82
Special Juries, proposed abolition of, 51–52
Speculative solicitors, 275–276
Stamp Acts, the, and newspaper proprietors, 91
"Stanzas on Waterloo" (J. H. Parry), 24

Stationery Office, and the printing of the N.W. England Industrial Unrest Report, 160–161
Statistics of, trades using summonses at Manchester County Court, 98; debtor prisoners 103–104; cost of Workmen's Compensation, 113, 1920–148, 1925–150; divorce, 268; County Court expenditure and revenue, Appendix A; *see also* Judicial Statistics.
Sterndale, Lord, on "contracting out" decisions under Workmen's Compensation Act, 135–136
Sterne, Laurence, quoted on Hobby Horses, 53
Stones of Venice (Ruskin), quoted, 178
Stonor, Judge, on imprisonment for debt, 100
"Street-risks," Court of Appeal's doctrine regarding, in the Workmen's Compensation Act, 132–133
Sugar, distribution of, in Manchester, 1917, 159
Sumner, Lord, quoted on Lord Parker, 140–141
Sunday Chronicle, Judge Parry's articles in, on the Law and the Poor, 53
Suttee, 228, 245
Swedenborg, quoted on Hell, 15

Taylor, Sir Henry, on departmental indecision, 198–199
Taylor, Jeremy, "Prayers relating to Justice," quoted on debts, 109–110
Taylor's Case, 2, 12
Temple Church, 176
Tennant, Mrs., on separation orders as an alternative to divorce, 243
Thackeray, on English and French criminal law procedure, 265
Theodosius, Edict of, on divorce 222
Tichborne Case, the, 26
Times, The, letter to, criticising Money Lenders' Act, 1900, 45; on Rowland Hill's Post Office reform, 190
Tomlins, T. E., 63
Tout, Professor, on the mediæval Civil Service, 10–11
Trade, Board of, 214–215
Treasury, the, antagonism of, to reform, 42, 44; control of Civil Service by, 42, 210, 211; fee-snatching by and opposition of, to reforms necessitating loss of fees, 44–47, 155–156, 286, 287; principles of, governing expenditure and revenue of County Courts, 68, 100, 107, Appendix A; attitude of, to War Pensions, 153, 154, 162; apportionment fees demanded by, under Workmen's Compensation Act, 155; Lord Chief Justice on methods of, 156; examples of methods of, 160; the "Judas mind" in, 211–212
Trent, Council of, formulation of separation *a mensa et thoro*, by, 222, 224; sacramental nature of marriage recognised by, 227
Trevelyan, Sir Charles, Report on Civil Service by, 1853, 195
Tristam Shandy, quoted, 152–153
Trotter, quoted on experience, 33
Truth, attack on Money Lenders' Act, 1900, by, 45
Twelve Tables, the, debtor law of, 81–82
Tyburn, Dr. Johnson on, 13

U.S.A., treatment of debtors in, 105; Pension Appeal judgments in, 168–169; legal aid to the poor in, 278–279; Conciliation Courts in, 285, 290

Valentinian, Edict of, on divorce, 222
Verbatim from Boileau (Pope), quoted, 256

Wales, Prince of, Institution of, at Carnarvon, 38
War, the, *see under* Great European War, 1914–1918
War Pensions, Hayes Fisher's proposals for, 153–154; Ministry of Pensions Bill passed, 161–163; claims of "discharged as unfit" to, 163, and appointment of Appeal Tribunal to determine, 157, 163 *et seq.*; made statutory rights, 1919, 174–175
War Pensions Appeal Tribunal, set up, 157, 163; constitution and duties, 164–166; official objections and attitude to, 164 *et seq.*, 177, 178; in action, 167–174
Welldon, Bishop, 37
Weston, Richard, refusal of, to plead in Overbury murder trial, 17–18
Wife, a, husband's control of, in the Jackson case, 8; duty of, as laid down in the *Padmapurana*, 229; status of, and position in divorce, 230, 239, 247
Wilkes, John, 87
Winter Night, A (Burns), quoted, 1
Worcester Prison, Governor of, example of imprisonment for debt given by, 101, 102
Workmen's Compensation, principle decided by the Priestley case, 117–119, 122, 139, 141; in Ontario, 144–151
Workmen's Compensation Act, article on, 52; fees excused in, 66, 155; genesis and intentions of, 111–115, 123–124; statistics of, 113, 147, 149–150; interpretation of, by judicature, 115–116, 178; previous state of law, 117–123; Appeal Court decisions on, 124–138; House of Lords decisions on, 129–133, 138 *et seq.*; bad drafting of, and judicial attitude to, 140–141; compared with that of Ontario, 147–151; apportionment fees demanded by the Treasury, 155–156; County Court work in administering, 275–276; Montague Berryman's work on, 275; conciliation suggested for, 291–292
Works, Office of, 38 *et seq.*

Yates, Edmund, 189
York, County Court of, 63; Archbishop of, antagonism of, to Divorce Reform, 239, 243 *et seq.*, 247, 252

Zenas, 15

85596 261.1 S P249

Parry, E.A.

The gospel and the law

261.1 S 85596
P249